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A VOLUME OF THE BOOK OF PRECEPTS

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IV

THE PRESERVED FRAGMENT COMPARED WITH MAIMONIDES

WHILE giving a *résumé* of the precepts that are preserved in this manuscript, I find it instructive to compare them with those enumerated by Maimonides in his *Sefer ha-Miṣwot*. In his younger days Maimonides regarded Ḥefeṣ as a reliable authority, and followed him in various explanations of the Mishnah, though he seldom mentions his name. It is only in two places that Maimonides declares his indebtedness to Ḥefeṣ, and in both cases he throws the responsibility of his errors upon the latter. When asked by his pupils about certain statements that occur in his *Yad ha-Ḥazaḳah* and do not harmonize with his commentary, he replies that the explanations found in his *Code* are the correct ones, whereas the others are due to the influence of Ḥefeṣ.¹⁸² This, at all events, is sufficient ground for the assumption that Maimonides readily borrowed explanations from the latter.

Book 3, section 3, precept 8. Only the end of this precept is preserved. We are in the midst of a lengthy quotation

¹⁸² *Pe'er ha-Dor*, 140, 142. The Hebrew translation by Tama is very vague and sometimes misleading. See Geiger, *מלא חפנים*, p. 55. The Arabic original of the first reference is given by Munk in his *Notice sur Abou'l Walid*, p. 198.

from Tosefta Shebu'ot 1, 8, dealing with the case of a man who entered the Sanctuary while ritually unclean, without being aware of it. As the following precepts show, this precept must have dealt with civil matters, and it is hard to see to what purpose such a quotation was introduced. It is, however, possible that this discussion was a mere digression. But I suspect that this section is disarranged, since in any case we have ordinances appertaining to damages and sacrifices in one and the same section.¹⁸³

Ibidem, precept 9. He who kindled a fire which went forth and consumed his neighbour's crop or anything lying in the field should pay full damages. If the conflagration was caused by the wind, he who kindled the fire is free. It matters not whether he kindled the fire intentionally or not. If the fire crossed a river or pond which is eight cubits wide, or a public road which is sixteen cubits wide, he is not obliged to pay damages. If a man kindled a fire in his own yard and the flame or sparks flew over and consumed something in his neighbour's yard, it is necessary to investigate and see whether the fire as intended by him who kindled it was sufficiently strong to go over to the neighbour's yard or not. In the former case he is to pay for the damages, but not in the latter. As to the distance a fire is apt to cross while the wind blows, Tosefta Baba ḥamma 6, 22 is quoted. If while consuming a barn the fire also destroyed something which is customarily placed there, he who kindled it is obliged to pay for it.

This corresponds to Maimonides, positive precept 241, where three lines are devoted to it, reference being made to Baba ḥamma.

Ibidem, section 4a, precept 1. If an ox which is not in

¹⁸³ See above, chapter III.

the habit of goring gores a man to death, the ox shall be stoned, and its flesh shall not be eaten; but the owner of the ox shall be free. Thrusting, biting, crushing, and kicking are included in the category of goring. Beasts of prey, or otherwise, and birds are to be treated like an ox. If the owner of the ox sold or consecrated it, before it was put on trial, the action is valid; after that, the action is not valid. It is unfit for a sacrifice; it must therefore be sold, and the price thereof is to be used for repairing the Temple. If the ox was trained to gore, it is not to be killed, and is fit for a sacrifice. It is prohibited to derive any benefit from the body of an ox that was stoned.

Maimonides divides this precept into two: positive precept 237, merely stating that we are commanded to adjudicate the case of a goring ox, and negative precept 188, dealing with the prohibition of eating the flesh of a stoned ox. Hefesh regards these two as one precept, because they are the consequences of one deed.

Ibidem, precept 2. If the ox was in the habit of goring, the owner having been warned to guard it, and it killed a man, the ox is to be stoned, and the owner is worthy of death at the hands of God. The owner should also pay ransom, which should be fixed by arbitration. An ox put in this category is one which gored on three consecutive days. The owner must be warned in the presence of the judges. In case the ox is unmanageable, it must be slaughtered. The court is to compel the owner of the ox to satisfy his litigant. Tradition tells us that there are twenty crimes whose punishment, which is not mentioned in Scripture, is to be meted out by God. The different laws, depending upon the ownership of the place where the accident of goring took place, are minutely described in the

name of R. Simeon (Tosefta Baba ḥamma 1, 6). The proof that these two precepts do not apply to our times is to be found in Sanhedrin 2 a, Shabbat 15 a, and Berakot 58 a.

Maimonides does not count this precept separately. He obviously includes it in the preceding, not differentiating between *tam* and *mu'ad*. He no doubt rejects this as a separate precept in accordance with principle 7 which he laid down in his introduction to his *Sefer ha-Miṣwot*.¹⁸⁴ The key-note of that principle is that the developments and ramifications of a precept must not be counted separately.¹⁸⁵ He goes on to explain at length that the various cases under one heading must not be mistaken for precepts, even if the Pentateuch enumerates them separately.

Ibidem, precept 3. If the congregation of Israel erred unwittingly, and the thing was hidden from the eyes of the assembly; when their sin becomes known unto them, they are to offer a young bullock for a sin-offering and bring it before the tent of meeting. The rites are to be carried out in accordance with Lev. 4. 13-21. By the words *the congregation of Israel* the judges of the first rank are meant. The words *and the thing was hidden* imply that part of a law, not the entire law, was broken. The transgression must be such that, if committed wittingly, the transgressor would be cut off from his people, that is to say, his punishment would be *כרת*.

This corresponds to Maimonides, positive precept 68, where reference is made to Horayot and Zebahim.

Ibidem, precept 4. If a king sinned, and did unwittingly a forbidden thing; when his sin becomes known unto him, he shall bring a goat, a male without blemish. The rites

¹⁸⁴ Ed. Bloch, pp. 21-6.

¹⁸⁵ לא ינבני אן יעד פקה אלשריעה (p. 21).

are to be carried out in accordance with Lev. 4. 22-6. It is necessary that he himself should become aware of his sin. This sacrifice is specially prescribed for a king. If he transgressed while being king, and was deposed in the meantime, before he brought the sacrifice, he is to bring it afterwards, as though he were still king.

Maimonides does not count this precept separately, and he obviously includes it in the following. Here again, as in the case of precept 3, 4 a, 2, principle 7 would bar this precept from being reckoned separately.

Ibidem, precept 5. If a layman transgresses unwittingly, and subsequently becomes aware of his transgression, he should bring for his oblation a goat, a female without blemish. The rites are to be performed in accordance with Lev. 4. 27-35. This ordinance applies also to a member of the court of justice who acted on his own decision. If, however, he acted on the decision of the court, he is not obliged to bring the sacrifice. The transgressor is to bring the sacrifice only in the case when he committed the deed alone; but if the deed was committed by more than one person, there is no need to bring an offering.

This corresponds to Maimonides, positive precept 69, where reference is made to Horayot, Keritot, Shabbat, Shebu'ot, and Zebaḥim.

Ibidem, precept 6. A man who commits a sin without knowing it, must bring a ram without blemish for a trespass-offering. The rites are to be performed in accordance with Lev. 5. 17-19. Tradition tells us that this sacrifice applies to a man in whose presence were two kinds of food, one of which was forbidden: he ate one kind and knows not which it was; or to a man in a similar case of doubt. If he subsequently realized that he had trans-

gressed, he should bring a trespass-offering ; but if he is still in doubt, he brings a *suspended trespass-offering*. If, however, after bringing a *suspended trespass-offering* (before it was slaughtered) he realized that he transgressed, or became sure that he did not transgress, it is necessary to delay the slaughtering of the animal. It must be allowed to graze until it contracts a blemish, so that it might be sold, and for the price thereof another animal be bought and sacrificed as a free-will offering.

This corresponds to Maimonides, positive precept 70, where the case is explained as by Hefes and reference is made to Keritot.

Ibidem, precept 7. If the congregation of Israel erred by worshipping idols, they should bring a young bullock for a burnt-offering and a he-goat for a sin-offering. The rites are to be performed in accordance with Num. 15. 22-6. This precept, like precept 3 of this section, applies to the judges. The proof that this transgression is in connexion with idolatry is to be found in Sifre, p. 31 b, (ed. Friedmann).

Maimonides does not count this precept separately, according to principle 7,¹⁸⁶ and he obviously includes it in 68.

Ibidem, precept 8. One person who sins unwittingly by worshipping idols should bring a she-goat, a year old, for a sin-offering. The rites are to be performed in accordance with Num. 15. 27-8. The proof that this transgression is in connexion with idolatry is to be found in Sifre, p. 32 b.

This precept, too, is not counted separately by Maimonides, according to principle 7,¹⁸⁷ and he includes it in 69.

Ibidem, precept 9. A man who stole something, and is

¹⁸⁶ See the preceding two notes, and the page to which they refer.

¹⁸⁷ See above, notes 184, 185, and the page to which they refer.

unable to restore the stolen property and its double, or the value thereof, to its owner, shall be sold for his theft.

Maimonides does not count this precept separately, according to principle 7,¹⁸⁸ and he obviously includes it in positive precept 239, which deals with theft.

Book 3, section 4 b, precepts 1 and 2. He who is commanded to bring a tenth of an ephah of fine flour in connexion with certain sacrifices is forbidden to pour oil or put frankincense upon it. The prohibition against pouring oil is one precept, and the prohibition against putting frankincense is another. Tradition tells us that this prohibition is only against that part which is to be offered up, but the priest may pour oil or put frankincense upon the remainder. If he put frankincense on the part that is to be offered up, he may remove it. This naturally does not apply to oil, which cannot be removed.

Maimonides, too, counts these two precepts separately. They correspond to negative precepts 102, 103, where Menahot 59 b is quoted in order to prove that these two precepts are to be reckoned separately. The reason why Ḥefes treats of these two precepts in one paragraph is because they are derived from one verse.

Book 4 deals with sacrifices which are offered freely ; it is explained that it is forbidden for a man who is not of the seed of Aaron to offer up sacrifices upon the altar ; it further treats of vows, consecration of property, estimation of lives, and similar subjects. It contains thirty-six precepts, which are divided into three sections. The first section treats of animal sacrifices, and does not apply to our times. This section is subdivided into two subsections : one containing ten positive precepts, and the other com-

¹⁸⁸ See above, notes 184, 185, and the page to which they refer.

prising eight negative precepts. The second section contains seven precepts dealing with meal offerings, and is also inapplicable to our times. It is subdivided into two subsections: one containing five positive precepts, and the other comprising two negative precepts. The third section consists of eleven precepts concerning the consecration of property and the estimation of lives, and is subdivided into two subsections: one containing eight precepts, five positive and two negative, which do not apply to our times, and the other comprising three positive precepts which are obligatory throughout all ages.

Book 4, section 1 a, precept 1. He who freely offers a burnt-offering of the herd is commanded to bring a male without blemish. The rites are to be performed in accordance with Lev. 1. 3-9. He has to be present while the animal is offered up. The slaughtering may be performed by anybody, including women and slaves, provided they are ritually clean. The offering up, however, must be done by priests. Details of the procedure are given in accordance with tractate Tamid.

This corresponds to Maimonides, positive precept 63, where the whole subject is disposed of in a few lines.

Ibidem, precept 2. He who freely offers a burnt-offering of the flock is commanded to bring a male without blemish. The rites are to be performed in accordance with Lev. 1. 10-13.

Maimonides, according to principle 7,¹⁸⁹ does not count this and the following precepts separately, but includes them in the preceding precept.

Ibidem, precept 3. He who freely offers a burnt-offering of birds is commanded to bring turtle-doves or young

¹⁸⁹ See above, notes 184, 185, and the page to which they refer.

pigeons. The rites are to be performed in accordance with Lev. 1. 14-17. Turtle-doves are fit for this oblation only when they become yellow, while young pigeons cease to be fit as soon as they become yellow. The priest must sever the head from the body in the manner described in Tosefta Ḳorbanot 7. 4.

Ibidem, precept 4. We are commanded to bring our burnt-offerings, sacrifices, tithes, heave-offerings, vows, free-will-offerings, and the firstlings of our herd and flock unto the special place.

Maimonides counts this section of the Bible as three positive precepts (83, 84, 85) and one negative (89). Positive precept 83 of Maimonides is slightly different, but, as he derives it from the same verse, this precept of Ḥefes may be regarded as covering it entirely.

Ibidem, precept 5. He who brings a peace-offering must bring the fat with the breast upon his hand that it may be waved before the Lord. The rites are to be performed in accordance with Lev. 7. 30, 31. The waving must be done towards all directions.

Maimonides does not count this separately, according to principle 12,¹⁹⁰ and he obviously includes it in positive precept 66.

Ibidem, precept 6. It is commanded that the various kinds of fat of a peace-offering of the flock should be offered upon the altar. The rites are to be performed in accordance with Lev. 3. 9-11. If one who brought a peace-offering thought that it was a firstling or tithe, this thought disqualifies the sacrifice. But if while slaughtering a firstling

¹⁹⁰ This principle says that the parts of a ceremony in connexion with a precept must not be counted separately: **לֹא יִבְנִי אֶן תַּעֲדָה אֶחָד צִנְאָתָהּ מֵא** לא יבני אן תעדה אחת צנאתה מא (ed. Bloch, pp. 47-50).

or tithe he intended it to be a peace-offering, the sacrifice is not thereby disqualified.

This precept, too, is included by Maimonides in positive precept 66. It is not counted separately; in accordance with principle 12.¹⁹¹

Ibidem, precept 7. It is commanded that we bring fine flour, wine, and oil when we offer lambs, rams, or young bullocks as burnt-offerings, or sacrifices to accomplish a vow, or free-will offerings. The libation is not necessary for all sacrifices, but only for some of them.

This precept is also omitted by Maimonides, in accordance with principle 12.¹⁹²

Ibidem, precept 8. If the animal brought as an oblation has a blemish, it can only be brought as a gift, but must not be offered for a vow. The various terms mentioned in Lev. 22. 23 are explained in accordance with Bekorot 40a. Such an animal must be sold, and the price thereof used for repairing the Temple.

Maimonides does not count this as a precept, because that verse in Leviticus really prohibits the offering of animals with blemishes. The permission to use it for a free-will offering cannot be regarded as a separate precept according to principle 7.¹⁹³

Ibidem, precept 9. A free-will offering and an oblation brought in fulfilment of a vow must be eaten on the day when it was sacrificed and on the morrow.

Maimonides does not count this separately, according to principle 7.¹⁹³

Ibidem, precept 10. He who brings a thank-offering is

¹⁹¹ See preceding note.

¹⁹² See note 190.

¹⁹³ See above, notes 184, 185, and the page to which they refer.

commanded to bring unleavened cakes mingled with oil, and unleavened wafers anointed with oil, and cakes mingled with oil of fine flour soaked, and cakes of leavened bread. He must bring ten pieces of each kind, all of which amount to forty. The quantity of oil is half a log.

Maimonides omits this precept according to principle 12.¹⁹⁴

Book 4, section 1 b, precept 1. He who sacrifices a thank-offering must not leave the flesh thereof until the morning of the third day, but he must eat on the day when it was sacrificed and on the night of the second day. Tradition tells us that he must not eat of this sacrifice after midnight of the second day in order to avoid a transgression.

This corresponds to Maimonides, negative precept 131, which is of a much wider scope.

Ibidem, precept 2. It is prohibited to sacrifice an animal that is blind or has any other blemish mentioned in Lev. 22. 22. The various blemishes are described and explained in accordance with Bekorot 41 a, 43 a, 44 a.

Maimonides has three negative precepts about sacrificing an animal with a blemish: 92 forbids the slaughtering; 93 forbids the sprinkling of the blood; 94 forbids the burning of the limbs. He derives these precepts from Lev. 22. 22–24 as explained in Sifra.

Ibidem, precepts 3 and 4. It is forbidden to offer up an animal that is castrated or has any other blemish mentioned in Lev. 22. 24. These blemishes are explained in accordance with Bekorot 39 b, Tosefta Yebamot 10. 5, and Sifra. It is forbidden to castrate a human being or an animal. Tosefta Makkot 4. 6 is quoted to explain all cases.

¹⁹⁴ See above, note 190.

Maimonides omits precept 3 according to principle 7,¹⁹⁵ and obviously includes it in the preceding. Precept 4 corresponds to Maimonides, negative precept 361.

The reason why Ḥefeṣ groups these two precepts together in one paragraph is because they are both derived from one verse.

Ibidem, precept 5 and 6. It is forbidden to bring for an oblation the hire of a harlot and the wages of a dog. The explanation of *hire* and *wages* is given in accordance with Temurah 29 a. If two partners had a certain number of cattle and one dog, and they divided them into two parts equal in the number of the heads, the part without the dog is forbidden, for one of them corresponds to the dog in the other part, and is hence the exchange of a dog. But the share containing the dog is not forbidden. The offspring of the hire of a harlot or the wages of a dog is qualified for a sacrifice.

Maimonides, quite inconsistently, reckons these two cases as one precept (negative precept 100).

These two precepts are again grouped by Ḥefeṣ in one paragraph, because they are derived from one verse.

Ibidem, precept 7. It is forbidden to exchange an animal which has been prepared for a sacrifice for another. If such a thing took place, both animals are holy unto the Lord. If the offspring or exchange was exchanged, the other animal does not become holy thereby. Under no circumstances must the animal be exchanged, even if the first animal had a blemish, while the second was sound. He must not exchange one animal for a hundred animals and *vice versa*. Even if the exchange was done unintentionally, the other animal becomes holy.

¹⁹⁵ See above, notes 184, 185, and the page to which they refer.

This corresponds to Maimonides, negative precept 106, where reference is made to Temurah.

Ibidem, precept 8. It is forbidden that we should eat outside the special place the tithes of grain, of new wine, or of oil, or the firstlings of the flock or the herd, or vows, or free-will offerings, or heave-offerings. Tithes will be explained in the sixth book, firstlings in the fourteenth book; vows of all description were dealt with in the first book, and will be further treated of in this book.

Maimonides counts this as eight separate negative precepts (141, 142, 143, 144, 145, 146, 147, 149), thus reckoning each case separately. It is quite impossible to assume that Ḥefeş enumerated these cases separately in the other books to which he refers, for no trace of them is found in the present book where vows are dealt with.

Book 4, section 2 a, precept 1. He who brings an oblation of a meal-offering of fine flour is commanded to pour oil upon it and put frankincense thereon. The rites are to be performed in accordance with Lev. 2. 1, 2. The flour must not weigh less than seven hundred and twenty drachmae, and the oil not less than one hundred drachmae. There are ten kinds of meal-offerings from which a handful is to be taken, and all of them are enumerated in Menahot 72 b. The measure of a handful (*kemiṣah*) is the width of three fingers, that is to say, the hand without the thumb and pointer.

This corresponds to Maimonides, positive precept 67, which is of a more general character. Reference is there made to Menahot.

Ibidem, precept 2. He who brings an oblation of a meal-offering baked in the oven is commanded to bring unleavened cakes of fine flour mingled with oil, or un-

leavened wafers anointed with oil. He has the choice of bringing either cakes or wafers. The oil is to be smeared in the shape of a semi-circle.

Maimonides does not count this and the following two precepts separately, according to principle 7.¹⁹⁶ He includes them in the preceding precept.

Ibidem, precept 3. He who brings an oblation of a meal-offering of the baking-pan is commanded to bring it of fine flour, unleavened, mingled with oil; he should part it in pieces, and pour oil thereon. The word מִחֶבֶת is explained in accordance with Menaḥot 63 a and Sifra. Each piece must be of the size of an olive.

Ibidem, precept 4. He who brings an oblation of a meal-offering of the frying-pan is commanded to make it of fine flour and oil. The word מִרְחֶשֶׁת is explained in accordance with Menaḥot 63 a.

Ibidem, precept 5. It is obligatory to salt sacrifices. Only the part which is actually offered up should be salted, not the entire sacrifice. Thick salt is to be used, so that it should not dissolve quickly.

Maimonides makes two precepts out of this one: positive precept 62, which corresponds to this, and negative precept 99, which is a prohibition against offering up a sacrifice without salt. He refers to Menaḥot and Zebahim.

Book 4, section 2 b, precept 1. It is forbidden to burn leaven or honey as an offering. By *honey* is meant *dates*. If the slightest quantity of honey or leaven was mingled with anything that is to be offered up, that part becomes disqualified, according to Sifra.

This corresponds to Maimonides, negative precept 98,

¹⁹⁴ See above, notes 184, 185, and the page to which they refer.

where a reason is given why honey and leaven are not counted separately.

Ibidem, precept 2. It is prohibited that one who is not of the seed of Aaron should associate with priests in matters wherein they are considered superior to all other men.

This corresponds to Maimonides, negative precept 74.

Book 4, section 3 Aa, precept 1. A man who vows his person unto the Lord should give as his value in accordance with Lev. 27. 2-7. If he is poor, he should pay as much as he can afford. There is a difference between making a vow and promising a value. Thus if a man says: 'I vow the price of my hand', the judge should estimate the excess in value of a slave who has a hand over one who lacks a hand. But if he says: 'I promise to give the value of my hand', he need not give anything. If he vowed one of his vital members, as, for instance, his heart or head, he must pay for his entire body. If he vowed the price of a child a month old, but did not pay until more than five years elapsed, he need only pay the value of the child at the time when the vow was made. If he says: 'I vow half of my value', he is to pay half of his value; if, however, he says: 'I vow the value of half of my body', he is to pay all his value. A poor man must not pay less than a sela'. If after having paid a sela' he became rich, he need not pay any more. But if he possessed less than a sela', and subsequently became rich, he is to pay the value of a rich man.

This corresponds to Maimonides, positive precept 114, where a few lines are devoted to the entire subject, reference being made to tractate 'Arakin.

Ibidem, precept 2. A man who consecrates his house unto the Lord is commanded to have it estimated by the

priest, and in case he wants to redeem it, must pay its value with the addition of the fifth part of the estimation. This ordinance refers to a dwelling-house according to Sifra.

This corresponds to Maimonides, positive precept 116.

Ibidem, precept 3. A man who vowed an unclean beast, which may not be offered as a sacrifice, unto the Lord, should have it placed before the priest, who should estimate its value; in case the former owner wishes to redeem it, he should pay its value with the fifth part of the estimation. By an *unclean animal* is meant one which is disqualified on account of a blemish, and does not refer to unclean species of animals. Our teachers declare that it is forbidden to sanctify, vow, or consecrate anything nowadays.

This corresponds to Maimonides, positive precept 115.

Contrary to his custom, Ḥefes disregarded here the biblical order, and placed the consecration of a house before the vowing of an unclean animal. It is, however, not unlikely that the transposition is due to a scribal error. Maimonides follows in this case the biblical arrangement.

Ibidem, precept 4. A Nazarite who unwittingly became defiled by a dead body is commanded to shave his head on the seventh day, and to bring two turtle-doves, or two young pigeons, to the priest, to the door of the tent of meeting. If the seventh day happens to be Sabbath or a Festival, he must postpone his shaving. He has the option of bringing turtle-doves or pigeons. He has to bring the sacrifice, because he did not sufficiently guard himself against defilement. He is to commence counting again the days of his separation from the day when he shaved his head.

Maimonides counts this precept and the following one as one precept, positive precept 93. He explicitly states that these two shavings must not be counted separately,

since the shaving after defilement is a legal development of the ordinances appertaining to a Nazarite, and hence is to be excluded by principle 7.¹⁹⁷

Ibidem, precept 5. When the days of a Nazarite's separation are fulfilled, he is commanded to bring as his oblation a he-lamb a year old without blemish for a burnt-offering, a ewe-lamb a year old without blemish for a sin-offering, and a ram without blemish for a peace-offering, and a basket of unleavened bread, cakes and wafers, mingled with oil; and the meal-offerings and libations appertaining to them. These ordinances apply to a man who vows to be a Nazarite for a definite period, not to a perpetual Nazarite. As for the cakes and wafers, he must bring ten of each. It is stated that he must put some of the meat upon his hair, and throw them together into the fire. He must wave the offering towards the six directions.

This corresponds to Maimonides, positive precept 93.

Book 4, section 3 Ab, precept 1. It is prohibited for a Nazarite to eat grapes, fresh or dried, to drink anything made thereof, or to eat the husk or kernel. Even unripe grapes are forbidden. There is a difference between the word גֶּפֶן and כֶּרֶם, the former specifies only various kinds of vines, while the latter embraces also olive-trees. The leaves of a vine are not forbidden to a Nazarite. If a Nazarite drank twenty-five drachmae of wine, he must be flogged. He is to be flogged for wine separately and for grapes separately.

Maimonides counts this section of the Pentateuch as five negative precepts: 202, a Nazarite must not drink wine; 203, he must not eat grapes; 204, he must not eat dried grapes; 205, he must not eat the kernels of grapes; 206, he

¹⁹⁷ See above, notes 184, 185, and the page to which they refer.

must not eat the husk of grapes. He explains the reason why he counts them as five separate precepts, because the transgressor is flogged separately for each transgression.

Ibidem, precept 2. It is prohibited for a Nazarite to shave his head. Our teachers say that the shortest period of separation is thirty days. If a man says: 'I shall be a Nazarite for as many days as the hair of my head, or grains of sand, or dust', he is to remain a Nazarite for the rest of his life. If he says: 'I shall be a Nazarite like the number of the days of the year', he is to be a Nazarite thirty days for each day of the year. He must not cut his hair with a razor or any other instrument. If some of his hair fell out because he rubbed or scratched that place, there is no sin upon him. If a plague of leprosy appears on his head, he must shave his hair when he gets purified, even before the days of his separation are fulfilled. Thirty days are to be discounted from the days which he observed as a Nazarite. These ordinances apply to a man who vowed to be a Nazarite for a definite period, but not to a perpetual Nazarite. The commandment that a Nazarite should grow his hair naturally refers to one who has hair; if he is bald-headed, he must observe the other ordinances appertaining to a Nazarite. Even if the words which he uttered only hint at separation, and do not explicitly express it, he must become a Nazarite. If, however, they merely hint at a hint of separation, he need not become a Nazarite.

Maimonides counts this precept as two: negative precept 209, where the entire subject is referred to tractate Nazir, and positive precept 92, which asserts that the Nazarite must let his hair grow. He quotes a passage from Mekilta which explicitly states that there is a negative and positive precept in this connexion. Thus, if a Nazarite destroyed

his hair with a powder, the negative precept would not be transgressed by him, since he used no instrument; he, however, transgressed the positive precept, which enjoins him to grow his hair.

Ibidem, precept 3. It is forbidden for a Nazarite to enter into the presence of a dead body. He may, however, attend to the burying of a dead body that was found on the road where no other man is present. He must not come in contact with the blood of a dead body, if the blood weighs fifty drachmae, or with a part of a dead body of the size of an olive. The laws of a Nazarite are not applicable to our times.

This corresponds to two negative precepts of Maimonides: 207 and 208. He reckons the defilement through coming in contact with a dead body as one precept, and the entrance into the house where a dead body is lying as another. He quotes tractate Nazir 42 b, which shows that two prohibitions are involved.

Book 4, section 3 B, precept 1. He who makes a vow must fulfil it. The judges are to urge him to fulfil his vow.

This corresponds to Maimonides, positive precept 94, which is rather of a more general character.

Ibidem, precept 2. A man who makes a vow or swears an oath to bind himself with a bond is commanded not to profane his word, but must do all that proceeded out of his mouth. A boy of average intelligence must fulfil his vow, though he is only twelve years and one day old. But if his intelligence is below the average, the fulfilment of the vow is not incumbent on him. Under that age he need not fulfil his vow in any case. If an intelligent boy of thirteen years and one day old made a vow, and afterwards claimed that he had no conception of the meaning of a vow,

he is obliged to fulfil it. It matters not whether the oath is explicitly expressed or merely hinted at. An oath is only valid when it makes a man abstain from doing a permitted thing, but it cannot render permissible anything that is forbidden. His oath can have no effect upon restraining others. If he made an oath to perform an impossible task, he is to be flogged. If he vowed not to eat a certain food, because it is harmful, and it is found to be beneficial to him, his vow is not valid. One who vows not to dwell in a house, even the garret is forbidden unto him. One who vows not to eat meat, the liver, spleen, and entrails are thereby forbidden. He must fulfil his vow at the earliest opportunity, and if he specified a certain time, he must observe it before that time expires. The expression, *he shall not profane his word*, implies that he may have his vow annulled by some one else, but he himself, though he is a sage, must not annul his vow.

The gist of this precept is included by Maimonides in the preceding (positive precept 94). He, however, has a separate precept which permits the absolution of vows. This is positive precept 95, which is based on Num. 30. 3. Apart from this positive precept he has negative precept 157, which is a prohibition against the breaking of one's word. Nahmanides¹⁹⁸ agrees with Hefes in counting Deut. 23. 24 and Num. 30. 3 separately.

Ibidem, precept 3. This precept deals with the vows of women whether they attained the age of puberty or not. They are divided into five classes :

(1) If a girl in her father's house, who has not attained the age of puberty and is not married, uttered a vow and her father heard it and did not protest, her vow is valid. If,

¹⁹⁸ See his *השנוות* to Maimonides's *המצות*.

however, he protested on the day when he heard it, her vow is annulled. As soon as a girl is twelve years and one day old, her vows are valid, and there is no need to examine her intelligence, unless her mind is known to be defective. A girl who is eleven years old, or less than that, can make no vows. During her twelfth year it is necessary to examine her intelligence: if it is sound, her vow is valid, and her father has the privilege of annulling it; if her intelligence is defective, her vow is not valid. A girl, twelve years and one day old, of average intelligence, who claims that she did not know the purpose of the vow, and is therefore unwilling to fulfil it, is obliged to carry out all that proceeded from her mouth. On the other hand, a girl eleven years old who claims that she understands all about a vow, need not fulfil it. If her father thought at first that the vow was made by some one else, and subsequently realized that it was his daughter, he may annul the vow as soon as he learns this fact.

(2) If a betrothed girl makes a vow, her fiancé may annul it on the day he hears of it. If he did not protest, her vow must be fulfilled. That the verses Num. 30. 7-9 refer to a betrothed girl, not to a married woman, is explicitly stated in Sifre. If a man married a woman who had a long-standing vow which causes him pain, he may divorce her without giving her any money promised in her marriage document. A man may say to a woman at the time of marrying her: 'I annul all thy vows.' The vows of a betrothed girl who has not attained the age of puberty must be annulled by her father and fiancé. As soon as she attains the age of puberty, her father has no right to annul her vows.

(3) As for a married woman, the laws appertaining to
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her vows are identical with those of a betrothed girl. The vows a husband may annul are such which cause him mental or bodily pain. If a father or husband did not know that God permitted him to annul the vows of his daughter or wife, and subsequently learned this fact, he may annul a long-standing vow on that day. If she vowed not to eat a certain thing for a month, and he permitted her to eat thereof for a week, her vow becomes automatically void. If she vowed not to eat of two kinds of food, and he permitted her to eat of one kind, she may also eat of the other kind ; similarly, if he confirmed her vow with regard to one kind, it is confirmed also with reference to the other kind ; provided the two kinds were included in one vow. If a man wanted to annul the vow of his daughter, and it happened that it was his wife who made that vow, but he mistook her for his daughter, the vow does not thereby become void. He may, however, annul it afterwards, if he so desires. The same applies to the case when his daughter made a vow, and he mistook her for his wife. If he heard of the vow on the Sabbath day, he must use different words in annulling it. He should say to her : ' Eat this which you vowed not to eat.' While saying these words, he must mentally annul her vow. The expression used by a husband in annulling the vows of his wife are different from those employed by a sage.

(4) A widow and (5) a divorced woman have to fulfil all their vows. This refers only to women whose marriage was consummated. If a widow or a divorced woman made a vow which should take effect after thirty days, and meanwhile she married, her husband cannot annul it. On the other hand, if while married she made a vow which should take effect after thirty days, and her husband annulled it,

she need not fulfil it, even in case she was divorced or became a widow during that time. If a widow has a brother-in-law,¹⁹⁹ he may annul her vows, but not if she has two brothers-in-law.

Maimonides does not count this as a separate precept, in accordance with principle 7,²⁰⁰ and he includes it in the preceding precept.

Book 5, precept 1. One who came in contact with the carcasses of unclean animals and beasts is obliged to be unclean until sunset. If he carried a carcass, he and his garments become unclean. After having a bath and after being washed, he and his garments are to remain unclean until sunset. It matters not whether he touched the entire carcass or only part thereof. Even if he carried the carcass by means of another object, his garments become unclean. If the carcass was upon a vessel, under which lay some food or drink, the latter do not become defiled. The law imposed upon him to remain unclean until sunset is only to prevent him from coming in contact with sacred things. Aquatic animals, with the exception of the sea-dog, do not defile.

This corresponds to Maimonides, positive precept 96. He explains that in calling this a precept he does not mean that it is necessary to become defiled; nor is it forbidden to become defiled, otherwise this would be a negative precept. It merely tells us the ordinances to be observed when a man becomes defiled.

It is to be observed that Maimonides, like Hefes, places the laws of uncleanness immediately after those appertaining to vows.

¹⁹⁹ In the Levirate law.

²⁰⁰ See above, notes 184, 185, and the page to which they refer.

Ibidem, precept 2. One who comes in contact with the carcasses of the eight creeping things must be unclean until sunset. A part of the flesh of these animals defiles, as well as the entire body, provided it is not smaller than the size of a lentil. Anything smaller than that size having flesh and bone combined is also defiling. In this case it makes no difference whether the part was severed while the animal was alive or dead. If a rat which is created from the earth had already flesh and skin on one part, while the remainder was joined by the skin, and it was able to move about, it defiles one who comes in contact with it. Aquatic animals belonging to this species do not defile. The garments of him who came in contact with these animals are not unclean.

This corresponds to Maimonides, positive precept 97, which is disposed of in a few lines.

Ibidem, precept 3. Any vessel or instrument upon which one of the eight creeping things fell while dead is to be unclean ; it must be dipped in water, and remain unclean until sunset. These vessels are such as are fit for the work for which they were intended. The difficult words occurring in the tannaitic passages quoted in this connexion are briefly explained. Vessels are divided into two classes : (1) those which have a receptacle containing air ; (2) those which are of a flat surface and contain no air. In both classes are vessels which are subject to defilement and those which are not. Vessels not subject to defilement, though they have receptacles, are sacred vessels, and those that cannot be moved when filled with the things for which they were made. Children's toys are not subject to defilement, though they can be carried when filled. If, however, these toys are durable, they are subject to defilement. A num-

ber of other cases are mentioned and passages quoted. The difficult words occurring in these passages are briefly explained. All other vessels which have receptacles, not mentioned in the foregoing, are subject to defilement. The minimum measure of a garment subject to defilement is given for various cases in accordance with Kelim 27. 5 and other tannaitic passages. If a garment smaller than the minimum measure was completed, and a piece of material subject to defilement was added to it, the entire garment may be defiled only in the case when the attached piece is of material subject to a stricter defilement than the other. If an unclean vessel decreased in size, and another vessel was made of the material, it remains unclean only in the case when it can be used for the work for which it was originally made. Vessels of a flat surface, not containing air, which are not subject to defilement are wooden vessels which are only used directly, and are not a means of using other vessels. If their usage is indirect, they are subject to defilement. A number of instances belonging to this class are mentioned.

Maimonides does not count this precept separately. He evidently includes it in the preceding precept, according to principle 7.²⁰¹ The only surprising thing is that he counts the laws appertaining to the defilement of food and drinks as a separate precept (98).

The following tabular recapitulation of the above discussion will show at a glance the relation of the two systems in enumerating precepts.²⁰²

²⁰¹ See above, notes 184, 185, and the page to which they refer.

²⁰² The first number refers to the book (פסל), second to the section (דפ), the letters to the subsections, and the third number to the precept. The abbreviation p.p. = positive precept, and n.p. = negative precept. Where only two numbers occur there are no subsections.

Hefes	Maimonides	Hefes	Maimonides
3, 3, 9 = p. p. 241		4, 1 b, 7 = n. p. 106	
3, 4a, 1 = p. p. 237, n. p. 188		4, 1 b, 8 = n. p. 141, 142,	
3, 4a, 2 —		143, 144, 145,	
3, 4a, 3 = p. p. 68		146, 147, 149	
3, 4a, 4 —		4, 2a, 1 = p. p. 67	
3, 4a, 5 = p. p. 69		4, 2a, 2 —	
3, 4a, 6 = p. p. 70		4, 2a, 3 —	
3, 4a, 7 —		4, 2a, 4 —	
3, 4a, 8 —		4, 2a, 5 = p. p. 62, n. p. 99	
3, 4a, 9 —		4, 2b, 1 = n. p. 98	
3, 4b, 1 = n. p. 102		4, 2b, 2 = n. p. 74	
3, 4b, 2 = n. p. 103		4, 3Aa, 1 = p. p. 114	
4, 1a, 1 = p. p. 63		4, 3Aa, 2 = p. p. 116	
4, 1a, 2 —		4, 3Aa, 3 = p. p. 115	
4, 1a, 3 —		4, 3Aa, 4 —	
4, 1a, 4 = p. p. 83, 84, 85,		4, 3Aa, 5 = p. p. 93	
n. p. 89		4, 3Ab, 1 = n. p. 202, 203,	
4, 1a, 5 —		204, 205, 206	
4, 1a, 6 —		4, 3Ab, 2 = n. p. 209, p. p. 92	
4, 1a, 7 —		4, 3Ab, 3 = n. p. 207, 208	
4, 1a, 8 —		4, 3B, 1 = p. p. 94	
4, 1a, 9 —		4, 3B, 2 = p. p. 95 (?), n. p.	
4, 1a, 10 —		157	
4, 1b, 1 = n. p. 131		4, 3B, 3 —	
4, 1b, 2 = n. p. 92, 93, 94		5, 1 = p. p. 96	
4, 1b, 3 —		5, 2 = p. p. 97	
4, 1b, 4 = n. p. 361		5, 3 —	
4, 1b, 5 } = n. p. 100			
4, 1b, 6 }			

We thus see that out of the fifty-one precepts (the first of our fragment is not considered, because it is impossible

to ascertain what it dealt with) Ḥefeṣ and Maimonides agree on thirty. Out of the twenty-one precepts counted separately by Ḥefeṣ, but omitted by Maimonides, twenty can be accounted for by two of the principles laid down by the latter. Sixteen are excluded by principle 7,²⁰³ while four (4, 1a, 5; 4, 1a, 6; 4, 1a, 7; 4, 1a, 10) are omitted by principle 12.²⁰⁴ The remaining precept which Maimonides counts as one (n. p. 100), whereas Ḥefeṣ reckons it as two (4, 1b, 5; 4, 1b, 6), is the prohibition against offering the hire of a harlot or the wages of a dog upon the altar. This case must be put down, I think, to the inconsistency of Maimonides.

To make up for these twenty-one precepts, Maimonides has twenty-one other precepts which are not counted separately by Ḥefeṣ. It is true that we cannot be certain about a few of them, for they may have been placed in another part of the book. This is, however, unlikely, for Ḥefeṣ, according to his method of presentation, would not have neglected to inform us of that fact. Moreover, practically in every case we were able to see the reason of the discrepancy.

As a result of this examination it may be stated that there are three fundamental differences between the systems employed by Ḥefeṣ and Maimonides, respectively.

(1) The various ramifications and hypothetical cases of a certain group of laws, provided they are explicitly mentioned in the Pentateuch, are counted separately by Ḥefeṣ, whereas Maimonides regards them all as one precept. The latter emphatically differentiates between a law (משפט) and

²⁰³ See above, notes 184, 185, and the page to which they refer.

²⁰⁴ See above, note 190.

precept (מצוה).²⁰⁵ Principle 7, in which this point is clearly brought out, seems to have been chiefly directed against Hefes.²⁰⁶ This principle was sometimes broken also by Maimonides himself. He felt the inconsistency, and when he counts certain precepts which should have been excluded, he defends himself by saying that in the Talmud or in a halakic Midrash it is explicitly regarded as a separate precept. But then this proves that according to the Talmud this principle is not valid.

(2) Hefes does not count contraries twice. He either reckons it as a negative or positive precept. Thus since a Nazarite is prohibited to shave his head, there is no need to reckon as a positive precept that he is commanded to let his hair grow. If a sacrifice must be salted, there is no need to count as a negative precept that it is forbidden to offer up a sacrifice without salt. Maimonides, on the other hand, counts them separately. It is chiefly for this reason that in the part which we have discussed in detail Maimonides has more negative precepts than Hefes. In counting such a case as a positive or negative precept the latter is mainly guided by the context of the Pentateuch, but he probably was also influenced by circumstances, and put the precept in the category he required. It should be stated

²⁰⁵ *Sefer ha-Miswot*, ed. Bloch, p. 25.

²⁰⁶ While reading *Pe'er ha-Dor*, 140, where Maimonides designates Hefes as כותב הדין, I was led to believe that there was an intentional slur in that title, as one would say, that Halakist is a good codifier, 'a writer of laws', but is not sufficiently logical to enumerate the precepts. Fortunately, however, Munk (*Notice sur Abou'l Walid*, p. 198) quotes the Arabic original from a manuscript which is now, I believe, in the hands of D. Simonsen of Copenhagen. There Maimonides calls Hefes 'the author of the Book of Precepts' (صاحب كتاب الشرائع). It is only in Tama's inaccurate Hebrew translation that the words כותב הדין were supposed to cover that expression.

that Ḥefeş is not quite consistent in this respect. Thus he counts as a positive precept that we are commanded to bring our burnt-offerings, sacrifices, vows, free-will offerings, and the firstlings of our herd and flock unto the special place.²⁰⁷ But practically the same thing is reckoned as a negative precept: it is forbidden to eat outside the special place the tithes of grain, or of new wine, or of oil, or the firstlings of the flock or the herd, or vows, or free-will offerings, or heave-offerings.²⁰⁸ This inconsistency is, however, due to the circumstance that the Pentateuch stated both cases, the positive and the negative, explicitly.²⁰⁹ Maimonides, on the other hand, is not guided by the Pentateuch in this matter.

(3) Ḥefeş never makes use of a verse or set of verses more than once. It is only in extremely rare cases that he derives two precepts from one verse, and then there are usually two clauses in that verse.²¹⁰ In such cases he groups the precepts together in one paragraph. Maimonides, however, derives sometimes as many as eight precepts from one and the same verse.²¹¹

In general it may be stated that Ḥefeş follows the Pentateuch division very closely. If a certain law is repeated twice, it must be counted separately, especially as tradition

²⁰⁷ Book 4, section 1 a, precept 4 (text, fol. 10 a, l. 11).

²⁰⁸ Book 4, section 1 b, precept 8 (text, fol. 13 a, l. 15).

²⁰⁹ Deut. 12, 5, 6 and 12, 17.

²¹⁰ See, for instance, book 3, section 4 b, precepts 1 and 2 (text, fol. 8 a, l. 17), where two negative precepts are derived from the two clauses in Lev. 5, 11. Similarly, book 4, section 1 b, precepts 3 and 4 (text, fol. 12 a, l. 16) are derived from Lev. 22, 24. An exception to this rule is book 4, section 1 b, precepts 5 and 6 (text, fol. 12 b, l. 7), where two precepts are derived from one clause.

²¹¹ Thus negative precepts 141, 142, 143, 144, 145, 146, 147, 149 are derived from Deut. 12, 17.

usually makes the various paragraphs apply to different cases. Maimonides, on the other hand, while taking the Pentateuch as his basis, is guided by logical principles in the system of enumerating the precepts. Indeed, one may even go as far as to reduce the above three differences to this one only.

From the purely logical point of view the charge of inconsistency might with justice be brought against both Halakists. Maimonides, as was remarked above, pointed out that Ḥefes had committed the same errors for which he had censured the author of the *Halakot Gedolot*.²¹² The former in his turn did not escape the stricture of subsequent Halakists like Nahmanides and Isaac of Corbeil, the author of *ḥ"מ*, neither of whom can be accused of being hostile to him on general principles. The inconsistencies are quite natural in a subject which has no basis in reality. For, although the Tannaim and Amoraim, as was pointed out above,²¹³ believed that six hundred and thirteen precepts had been revealed to Moses, the writers or redactors of the Pentateuch had certainly no inkling of this number.

V

THE STYLE OF THE BOOK OF PRECEPTS

The language of the Book of Precepts is in the usual style of Jewish-Arabic, and shares most of its characteristics. In dealing with manuscripts which are not autographs, but copies of the third or fourth hand, one is at a loss to determine which mistakes emanated from the author, and which are to be ascribed to the ignorance of the copyist. The latter, however, cannot always be made the scapegoat, and

²¹² *Sefer ha-Miṣwot*, p. 5, ed. Bloch.

²¹³ Chapter I.

it is a striking fact that almost all texts contain the same kind of mistakes. Even the oldest manuscripts show the usual characteristics. Great caution must be taken in studying the grammatical and lexical peculiarities of Jewish-Arabic. One should not rely too much on the printed texts, for it has been the custom of most editors to consider it legitimate to correct mistakes. It is quite natural to credit an author with a knowledge of grammar of the language in which he writes. But it must be borne in mind that the Hebrew and Aramaic quotations occurring in such texts are sometimes misread, but seldom, or never, tampered with, and this would tend to prove that the copyists tried to be as faithful to the original as possible. Now when due allowance is made for errors for which the copyists can reasonably be held responsible, there still remains a vast number of mistakes which would convince one that those authors were not masters of Arabic diction. This is no doubt to be ascribed to the circumstance that the Jews devoted most of their time to the study of other literatures besides Arabic. Being bilingual they fell between two stools. They seldom wrote a natural Hebrew, and their Arabic never attained the elegance of even a mediocre native writer. Their Hebrew is abounding in Arabic idioms, while their Arabic is interspersed with Hebrew words and phrases which make it unintelligible to the Arab.

When we speak of Jewish-Arabic we mean the dialect spoken and written by Jews who did not assimilate, and were therefore devoting their time and energy to the study of the Bible and the Talmud. Nobody denies the possibility of a Jew being able to acquire elegance of style in Arabic. Indeed, some of the Jews who practically assimilated with the Bedouins wrote elegant verses. It is not

a question of race, it is merely a question of pursuit and surroundings. This is a sufficient reply to those who ask why should not men like Maimonides write as good an Arabic as Heine wrote German.²¹⁴ There is no justification in comparing Maimonides with Heine, for the latter had a thorough German training. We ought rather to compare Maimonides with R. 'Akiba Eger. One would certainly not expect the latter to write an elegant German. To my mind the difference between an Arabic classic and the average Jewish-Arabic book is about the same as between Goethe and the memoirs of Glückel von Hameln published by D. Kaufmann.

On the whole the majority of post-biblical writers were slovenly in their syntactical constructions. To them the matter was the dominant factor, and the style played no important rôle. This tendency produced that careless halakic style, a mixture of Hebrew and Aramaic, of which R. Sherira's Epistle is a conspicuous specimen. Of course their Arabic was superior to their Hebrew, for after all the former was their mother-tongue.

The greater bulk of mistakes committed by these writers are such as do not apply to the spoken language. There can be no doubt that at the period from which the earliest Jewish-Arabic production dates, the nunation was no longer pronounced, and hence there were no case-endings. In practically all manuscripts we find the cases wrongly used, the accusative being employed where syntax demands the nominative, or even the genitive, and *vice versa*. They almost invariably used the accusative in the predicate when كان or its 'sisters' is absent. This is against the rules of

²¹⁴ See I. Friedlaender, *Der Sprachgebrauch des Maimonides*, p. xi.

elementary grammar, for the predicate is under such circumstances in the nominative, even when the subject is in the accusative. Numerous examples of such mistakes occur in the text of Ḥefeṣ, and a few of them will suffice as an illustration.

Accusative for nominative : מִן אֲנַכְסָר לֵה צָרְפָּא (fol. 4 b, l. 20) ; וְצוּרָה אֲלֵאתְנָאן אֵיצָא חֵיוָאנָא יִסְלַמְה רִגְלָא לְרִגְלָא (fol. 12 b, l. 11) ; מִן לִנְסַכְהָ (fol. 15 a, l. 14) ; וְדַלְךְ מִשִּׁירָא אֵלֵי אֲלִבְכוּרִים (fol. 17 b, l. 22) ; וְזִמְנָא מַחְדוּדָא (fol. 27 b, l. 23).

Accusative for genitive : נַחוּ נֶאֱרָא (fol. 4 b, l. 13) ; חֵידָא גִיר תֵּאבְתָא (fol. 21 a, l. 23) ; פֶּאן חֵלְףָּ עֲלֵי שִׁי מִמְתַּנְעָא (fol. 22 a, l. 11).

Nominative for accusative : יֵצֵב עֲלֵי חֵרָא אֲלִקְרַבָּאן לֹא דֵהֵן וְלֹא (fol. 8 a, l. 20) ; וְאֵי שְׂרִיכִין אֲקַתְסַמָּא אֲנָנָא (fol. 12 a, l. 15) ; פֶּאן כָּאן צִאֲחָב אֲלִכְלִים צִאֲנָע (fol. 31 a, l. 22).

Nominative and accusative used promiscuously : מִן לֵה (fol. 3 b, l. 25) ; יִתְנַפֵּל לְלִקְרַבָּאן חֵיוָאן הוּא אַעֲמִי אוּ (fol. 11 b, l. 24) ; מַכְסוּרָא (fol. 22 a, l. 21).

As in the verbs the mood-endings were dropped in the spoken language, there is great confusion in this respect in Jewish-Arabic works. We find such constructions אֵן יִכֵּן (fol. 16 b, l. 23) ; קֵד נִדְרַת אֲלֵא תֵאכְלִין (fol. 22 b, l. 10) ; אֵלֵשִׁי אֲלֵדִי יִנְסָא מִנָּה (fol. 24 b, l. 18) ; לֹא יִדְרִי (fol. 7 a, l. 24, and many other places) and לֹא יִכְמִי (fol. 7 b, l. 12) may belong to this class, but it is also possible to consider them as that kind of exceptional orthography which Arabs call اشباع, that is to say, the unnecessary lengthening of a vowel.

As an indication of these writers' lack of appreciation for the finesses of the language, it may be mentioned that they employ the particle ف without any force whatsoever. Ḥefeṣ practically uses it instead of و. The monotonous

repetition of the construction **פ** . . . **פ** is exceedingly irksome. The copyist cannot be held responsible for such inaccuracies, unless we assume that he deliberately changed the letter, or that the original was written in Arabic script without diacritical points, so that **פ** could be confounded with **ב** in many cases, especially when the writing was cursive. Both suppositions are, however, highly improbable. Copyists seldom change such matters, and had the original been written in Arabic script without diacritical points, there would have inevitably occurred some other mistakes of a similar nature. In the absence of such traces, we must hold the author responsible for these confusions. On the other hand the particle **ف**, which is employed with graphic effect by the Arabs to introduce the apodosis, is almost entirely absent in Jewish-Arabic works.

It is to be observed that most of the above-named grammatical peculiarities have been found in the texts of Mohammedan writers. Ibn Abī Uṣeibī'a's *History of Physicians* is often referred to in this connexion. It is true that that book contains a number of mistakes. But whereas with Mohammedan writers it is a rare exception, with Jewish writers these mistakes are practically the rule. Moreover, the evidence adduced from the mistakes is not to prove Jewish-Arabic is a separate jargon, but to indicate the fact that those writers paid no attention to the study of Arabic grammar. For such forms like **אלה תאכלין** were certainly never used in the spoken language, and were due to want of knowledge. If a few Mohammedan writers also committed such mistakes, they, too, lacked accurate knowledge of their language.

Taking all the lexical characteristics of Jewish-Arabic into consideration, we would not be far wrong if we stated

that it is a kind of a jargon.²¹⁵ This is a natural consequence of Jewish exclusiveness. A group of people speaking a language of an alien race, and forming a separate circle, would easily develop a dialect of their own, which, though essentially resembling the parent-tongue, would have a number of words peculiar to itself. Thus when Jews conversed with their co-religionists they naturally employed a number of Hebrew words appertaining to religion, and these terms gradually became part of *their* Arabic. Furthermore, Jews had a vast literature of their own which they never abandoned, and as some words, especially technical terms, are not readily found to exist in another language, they were compelled either to retain the Hebrew words or to coin new expressions. It was hard to find an equivalent for עולה; but since עלה = Arabic *صعد*, they coined a form *صعيدة*. I even suspect the existence of a form *צאערה* in Jewish-Arabic. For the broken plural of forms like *صعيدة* is usually *فَعَائِلُ*; but Jewish writers employ *צואער*,²¹⁶ which is usually the broken plural of the active participle feminine. This would accordingly be a literal imitation of *עולה*. In some cases they introduced new words where genuine Arabic terms were at hand. For *מותר*, *permitted*, they could easily have used *مُكَلَّ*, but they preferred a literal translation of this word, and used *מסלק*.

Even nowadays, when public schools tend to do away with dialects, the Arabic spoken by the Jews of Tunis and Algiers differs considerably from that of the natives. A

²¹⁵ I use this term in no disrespectful sense. I would define a jargon as a dialect which had no natural development. Thus if a nation, while adopting a foreign tongue, still uses words and expressions of its former language, it may be said to speak a jargon, since it would not be readily understood by natives.

²¹⁶ See text, fol. 10 a, l. 12; Sa'adyā's translation, Deut. 12. 6.

careful study of Marcel Cohen's book on the Arabic dialect of the Jews of Algiers²¹⁷ proves this point. It is true that M. Cohen repudiates the idea that it is a jargon, but this merely depends on the point of view. The natives, who are after all the best judges, regard it as such.

It must, however, be admitted by all that want of stylistic elegance is to some extent compensated for by the marvellous vocabulary these writers have at their command. It is astounding the way Ḥefeṣ finds Arabic equivalents for the most obscure mishnic words and phrases. It is quite immaterial for our purpose whether these terms were first employed by Ḥefeṣ, or were in common use among Arabic-speaking Halakists. The fact that they were employed by Jewish writers is sufficient to indicate the extent of their vocabulary. I have no doubt that Jewish-Arabic texts have preserved some genuine Arabic words which long ago became obsolete and are not found in any of the lexica,²¹⁸ just as Jewish-German and Jewish-Spanish have retained some obsolete words of German and Spanish, respectively.

VI

THE MANUSCRIPT

The manuscript herewith edited was recently discovered by me among the Genizah fragments of the Adler Collection at the Dropsie College.²¹⁹ These fragments were acquired by Dr. Cyrus Adler while in Cairo in 1891. The entire codex consists of thirty-six and a half leaves which

²¹⁷ *Le Parler arabe des Juifs d'Alger*, Paris, 1912.

²¹⁸ A good instance is ⲁⲩⲁⲩⲓⲛ (text, fol. 1 b, ll. 9, 11), which obviously denotes a *pond*.

²¹⁹ See *JQR.*, New Series, III, 317 ff.

are held together by a string. The first four leaves do not belong to the Book of Precepts. Though the writing of those leaves closely resembles that of the remainder, it is safe to say that they were not originally bound together. They have 18, and sometimes 19, lines to a page, while the number of lines on the other pages ranges from 23 to 27. These leaves are of a lighter hue than the rest. They contain gaonic Responsa dealing with widely different subjects. As the writer of these Responsa is addressed as Gaon, they could not have proceeded from the pen of Hefes, who never bore that title officially.

The thirty-two leaves of the Book of Precepts are made up into four fascicles. Although the fascicles appear now to be unequal in the number of their leaves, I have sufficient proof that originally each fascicle consisted of ten leaves. The last page of every fascicle bears at the bottom the word with which the following fascicle begins. Each fascicle is marked by a letter of the alphabet. Guided by these signs, we can state with certainty that eight leaves of fascicle 1 are preserved, the first two leaves (not the outer sheet) being lost, while the last two are pasted to the following fascicle. The second and third fascicles are preserved in their entirety, having ten leaves each. The last fascicle has only three and a half leaves of writing, the rest being blank (except the last strip, concerning which see below), and practically torn off. The second, third, and fourth fascicles are marked א, ב, ג respectively, on the upper right-hand corner. We thus may safely assume that this volume never contained more than four fascicles, and that, with the exception of the first two leaves, we possess it in its entirety. For, although the last leaf breaks off in the middle of a sentence, the outward appearance makes it

quite evident that no writing is missing at the end, especially as the verso of the thirty-second leaf is blank.

That this was not the first volume of the Book of Precepts is self-evident, for it is inconceivable that the copyist managed to crowd the introduction and nearly three books in the narrow compass of two leaves, especially when we consider the magnitude of the first book. It was, no doubt, customary in olden times to copy separate volumes of a large work, just as pamphlets are issued nowadays. In Genizah lists of books we often come across the expression . . . **זו מן כתאב**. Among the Genizah fragments of the Jewish Theological Seminary of America I saw a number of lists with such phrases.²²⁰ Indeed, Harkavy announced²²¹ that such a list registered **זו מן כתאב הפין**. These words, however, were afterwards obliterated, for they are missing in Bacher's edition of this list.²²² Our fragment probably was such a pamphlet, and hence I am justified in supplying the title, 'A Volume of the Book of Precepts' (**זו מן כתאב**) (**אלשראיע**).

The last leaf is a narrow strip which was originally blank. One of the owners wrote on the recto the following words in bold square characters:

לעקוב ברבי יצחק הלוי
לבנו יחידו להגות בו הוא וצאצאיו
אמן סלה

Verso was used as an account book by another owner, for it has the following inscription in a different hand, which is a sort of Oriental cursive:

²²⁰ See also *REJ.*, XXXIX, pp. 199 ff.

²²¹ *Jüdisches Literaturblatt*, 1878, p. 43.

²²² *REJ.*, XXXII, p. 127. Comp. Poznański. *אנשי קירואן*, p. 28.

ענר אבו אלעלא ד דנא ויא קירא
ענר אבו אלפרנ ב וי קרא
ענר יוסף י ורק ענר אלמעלם י ורק.

The leaves measure $7\frac{1}{8} \times 5\frac{7}{16}$ in. ($= 17.6 \times 13.5$ cm.), and the number of lines in a page ranges from 23 to 27. The writing, which is in Oriental square with a distinct tendency to cursiveness, is very close, no space being allowed between separate words. It is the context alone that can help us to decide how the words are to be divided. On the whole it is written in a fairly legible hand. The only letters that are not clearly differentiated are \mathfrak{m} and \mathfrak{m} , while \mathfrak{d} and \mathfrak{r} are quite distinct, though not always correct. The copyist, however, frequently misread his original, and a vast number of mistakes crept in, apart from the usual errors due to homoioteleuton and dittography. In the original, which was before the copyist, \mathfrak{h} , \mathfrak{h} , and \mathfrak{t} seem to have been subject to confusion. He accordingly wrote $\mathfrak{mthh'aliah}$ instead of $\mathfrak{mth'aliah}$ (fol. 4a, l. 4), $\mathfrak{al'mothal}$ instead of $\mathfrak{al'mothal}$ (fol. 7b, l. 12). Similarly \mathfrak{r} and \mathfrak{r} , \mathfrak{b} and \mathfrak{b} were sometimes indistinguishable.

The orthography employed in this manuscript is that which may be termed classical, in contradistinction to the phonetic or vulgar spelling which is now and again met with in Jewish-Arabic fragments. It is, however, not quite consistent throughout the book, especially in the case of \bar{a} at the end of the word. Short vowels are, as a rule, without any signs whatsoever; but in a few exceptional cases \bar{z} is followed by \bar{y} , as $\mathfrak{m'ioan}$ (fol. 1b, l. 6) = $\mathfrak{m'ioan}$; \bar{u} by \bar{u} , as $\mathfrak{u'al'mothal}$ (fol. 26a, l. 11) = $\mathfrak{u'al'mothal}$; \bar{a} by \bar{a} , as $\mathfrak{a'qrea}$ (fol. 19b, l. 15) = $\mathfrak{a'qrea}$.²²³ It is hard to decide whether forms like \mathfrak{lam} are to be taken as orthographic peculiarities or syntac-

²²³ This, however, may be a mistake in form: the author or copyist considered this word as a triptoton.

tical errors. As I have pointed out above²²⁴ there are cases which indisputably show that the author or copyist confounded the moods.

In classical Arabic, *ā* at the end of the word is in some cases indicated by ٰ and in others by ى, and there are practically fixed rules when to write the one and when the other. Thus it would be regarded as an orthographic error to spell دَعَى or دَعَا. Dictionaries are careful to give the accurate forms, and where tradition wavers the fact is recorded. In this manuscript, as in all other Jewish-Arabic manuscripts, there is no fixed rule in this matter, and even one and the same word is found sometimes with ٰ and sometimes with ى. Thus נָחַל *was in the direction, was similar* (verb of נָחַל) is spelt נחא (fol. 2 a, l. 22) and נחי (28 a, l. 7) indifferently. Even *ā* followed by a hamza is sometimes represented by ى, as אֶלְבַּנִּי (fol. 2 a, l. 22) = اَلْبَنَاءُ; אֶרֶץ (fol. 3 b, l. 11) = اَلْأَرْضَاءُ; אֶלְאֶסְחָתְנִי (fol. 20 b, l. 23) = اَلْأَسْتَحْنَاءُ. It should be observed that such orthographic inconsistencies occur also in early Mohammedan manuscripts.²²⁵

A hamza is seldom represented even in the middle of a word. Thus we have אֶלְאֶרֶס (fol. 12 b, l. 16) = اَلْأَرَسُ. It is naturally awkward to represent a hamza at the end of the word by a letter, as it is usually preceded by ٰ. When hamza, however, at the end of the word follows a consonant, ى is sometimes the bearer thereof, as וְאֶלְנִי ²²⁶ (fol. 25 b, l. 1) = وَالْجَزَى. This ى then becomes part of the word, and hence remains even in the accusative singular, as פְּנוּיָא (fol. 5 b, l. 12).

The system of transcribing Arabic words in Hebrew

²²⁴ Chapter V.

²²⁵ See Nöldeke, *Geschichte des Corāns*, pp. 248-60.

²²⁶ Other manuscripts have נַי.

characters employed in this manuscript is that customary in Jewish-Arabic. Diacritical points are only placed over **ב** and **ז** to represent **ط** and **ض**, respectively, while **ג**, **ד**, **כ**, and **ת** retain their double nature without any distinguishing mark. Thus the context alone will decide whether **ג** stands for **ج** or **غ**, &c. The consistency with which this is carried out proves that this is due to phonetic influences, although this would not account for the omission of the point over **כ** when it represented **خ**, and this is one of the reasons why I did not feel justified in supplying any points. Another phonetic trace is to be found in the confusion of **ב** with **ז**. Thus we have **זרבה** (fol. 4 b, l. 20) = **ظرفا**. In colloquial Arabic these letters are often confused. **ظَهْر**, *midday*, is pronounced *duhr*; **نَظَارَة**, *spectacles, glasses*, is pronounced *naddāra*. On the other hand **ضابط**, *an officer*, is pronounced *zābit*.

The Hebrew quotations, too, offer some interesting peculiarities. Biblical words are in the majority of cases reproduced with masoretic accuracy. But post-biblical words deviate considerably from the system of orthography to which we are accustomed. In these words there is no uniformity, and one and the same word is spelt differently in one passage, as **רמבא** (fol. 2 b, l. 9) and **רבה** (*ibid.*, l. 10). The most striking mode of spelling is the frequent use of **א** to represent *ā* in the middle of the word, as **קנאכא** (*ibid.*, l. 7). In this respect our manuscript resembles the bulk of Genizah fragments. It is quite legitimate to assume that this is due to Arabic influence where such a mode of spelling is the rule.

VII

REFERENCES TO HĒFEŞ AND HIS BOOK

As this is the first time that anything by HĒfeş is published, it will not be amiss to give the passages where he or his book is quoted or merely mentioned. Whether HĒfeş is the author of the *Sefer HĒfeş* or not, it will be useful for easy reference to have also those passages included here. But owing to the fact that there is no unanimity of opinion on this matter, I place the passages from the *Sefer HĒfeş* and *Sefer he-HĒfeş* separately. Rapoport collected a great many passages that were found in books published up till 1861. The literature that appeared subsequently was thoroughly searched by bibliographers, chiefly by Poznański. A few further references from manuscripts and printed books were supplied to me in friendly communications by Professors Davidson, Ginsberg, and Marx, of the Jewish Theological Seminary of America, to whom I give credit in the respective places. One may feel certain that no passage occurring in books printed in modern times was overlooked; but I entertain some doubts whether the halakic literature was exhausted. It is only by mere chance that I was able to add one passage from *Mordekai*, Ketubot, IX, 234 (Wilna edition).

I have arranged the passages according to the subject-matter: halakah, philology and philosophy. Authors within the same class are placed, as far as possible, in chronological order. When one passage is quoted by various authors, whether in identical form or not, I thought it advisable to give cross-references.

A. HALAKAH

(1) Isaac Alfasi, *Responsa*, 109.

שאלה. אם יש מן הדין למי שקנה חצר ומצא בה מומין שיחזור על המום ולפרש לנו טעם רבותינו ז"ל שאמרו אין אונאה לקרקעות ופירש חפץ אלוף ז"ל שדבר זה במה שקנה אדם בעצמו אבל מה שקנה על ידי שליח יש לו אונאה דיכול למימר ליה לתקוני שדרתיך ולא לעוותי; תשובה. יש מן הדין למי שמצא מום בחצר אם לא הכיר באותו מום בשעת הלקיחה. וזהו שכתב חפץ אלוף ז"ל בענין האונאה יפה אמר.²²⁷

(2) Isaac b. Judah Ibn Ḡayyāt, *Sha'arē Simḥah*.a. *Day of Atonement Laws*, p. 63 (ed. Fürth, 1861).

ביצד היה מתורה אנה השם עויתי פשעתי וחטאתי לפניך דברי ר' מאיר וחכמים אומרים חטאתי עויתי פשעתי . . . בהלכות פסק כרבנן וכן נמי פסק רב פלמואי. ורב חפץ ומר רב סעדיה פסק[ו] כר' מאיר.²²⁸

b. *Laws of Lulab*, p. 103.

יבשו רוב עליו ונשתיירו בו כדי ג עלין לחין . . . והכי אמר רב חפץ אם נשתיירו ג עלין כשר.²²⁹

(3) Samuel b. Jacob b. Jam', *Ordinances concerning slaughtering*.²³⁰

הגרמה היכא דמיא כגון דקא שחיט עילוי חיטא דרישא או שחיט משיפוי כובע ולמטה . . . וצאחב מדרש השכם נקל אלמסתורה לם יוד ולם ינקץ סוי מא אכרנה מלשון ארמית ללשון הקרש והי אלטריקה אלדי (!) סלכאה מר חפץ אלוף ז"ל.

(4) Isaac b. Abba Mari, *Ha-'Itṭūr*, אות גט חליצה, p. 32 c.
וכן כתב בעל הלכות צריכי למיתב בההיא דוכתא בית דין ה' וכדכתי'
גיטא לכתבו במותב תלתא הוינא וכן נמי אמר מר רב חפץ גאון.

²²⁷ See *Pišē Recanati*, 386.²²⁸ See Abraham of Lunel, *Ha-Manhig*, p. 61 a.²²⁹ *Ibid.*, p. 67 a.²³⁰ See Steinschneider in *Geiger's Zeitschrift*, II, p. 77.

(5) Moses of Coucy, *Sefer Mišwot Gadol*, positive precept 48, p. 127 b.

ובספר חפץ כתוב שכך היה נוהג מר חפץ גאון שמביאין שטים וג'
כתובות מקרובותיה ונותנין כפחות' שבהן.²³¹

(6) Samuel b. Solomon in *Responsa of R. Meir of Rothenburg*, 250 (ed. Prague).

וכן מנהג של ישראל מגידין על דיני קנסות עד שיפיים עפ"י הגאונים
ורב אלפס ומר נטרונאי ומר חפץ ואין מרגיש' על מה שהוקשו לינקמ'
בבובס' וכ'.

(7) Abraham of Lunel, *Ha-Manhig*.

a. p. 61a.

בהלכות פסקו כרבנן וכן פסק רב פלמוי. אך רב חפץ ורבי' סעדיה
פסקו כר' מאיר מההוא דנחית קמיה דרב ועבר כר' מאיר ושביק ליה.²³²

b. p. 67 a.

וכן כתב רב חפץ גאון אם נשתייר בו בבל אחד ג' עלין לחין בשר.²³³

(8) R. Menahem of Recanati, *Piskē Recanati*, 386.

כתב רב אלפס בשם חפץ אלוף ז"ל הא דאמר אין אונאה לקרקע'
הני מילי במה שקנה הוא בעצמו אבל על ידי שליח יש לו אונאה דיכול
לומר לתקוני שדרתיך ולא לעוותי.²³⁴

(9) Mas'ūd Ḥai b. Aaron, *Ma'asē Roḳeah*, quotes in his preface the following note from an old commentary on Maimonides (p. 6):

ורב חפץ אמר חופר בארץ וקיבין העפר ושרייתו. חפר אלארץ
וגמעהא וגבלהא ועזנהא ותשכילהא וסכרהא.²³⁵

²³¹ See Meir of Rothenburg, *Responsa*, 852.

²³² See Isaac b. Judah Ibn Gayyāt, *Sha'arē Simḥah*, p. 63.

²³³ *Ibid.*, p. 103.

²³⁴ See Isaac Alfasi, *Responsa*, 109.

²³⁵ The text is slightly corrupt, and I corrected the grammatical errors.

B. PHILOLOGY

(1) Ibn Janāḥ.

a. *Kitāb al-Uṣūl* (ed. Neubauer), s. v. אשר, p. 73, l. 31 ff.

וראית فی کتاب الشرائع לחפץ. ואמא האשרה פשיטה יעצמוניה ויבטשפון
בורקה ויטופון חוניה כקולה המתקדשים והמטהרים אל הננות. וקאלו
רבותינו فی شرحה שלש אילנות הן אילן שנמט מתחלה לעברה זרה הרי
זה אסור שנ' ואשריהם תשרפון באש החלף [נוטל] מה שהחלף שנ'
ופסילי אליהם תנרעון לא החלף אלא העמיד תחתיו עברה זרה וסלקו
הרי זה מותר שנ' ואברתם את שמם.

b. s. v. כסת, p. 328, l. 3 ff.

הוי למתפרות כסתות. הנני אל כסתותיכנה هذه اللفظة مشهورة فی
קלם الاوائل ז"ל فی مثل قولם הכרים והכסתות אין בהם משום כלאים
وهی الوسائد: ואמא הכרים فهی المضربات من کتاب الشرائع לחפץ ז"ל.

c. s. v. כרר, p. 331, l. 5 ff.

وهی תסִי فی קלם الاوائل כרר فی قولם הכרים והכסתות אין בהם
משום כלאים וכרר וכסת מתקדשם וכן פסריה חפץ فی کتاب الشرائע.

d. s. v. כרכב, p. 337, l. 18 ff.

קל חפץ فی کتاب الشرائע ואמא כרכב המובח פקלזיז הנתי מן
البناء واهل الشام یسمون ذلك شرحا قال والنقل ورد بانه كان الموبח
شرحان احدهما معد ليمشى عليه הכהנים ללא יזלצלו اذا خدمו המובח.
والثانی للزينة لقولهم תנו רבנן אי זה הוא כרכב בין קרן לקרן ומקום רגלי
הכהנים אמה אטו כהנים בין קרן לקרן הוו מסגו אימא מקום רגלי הכהנים
והכתיב תחת כרכבו מלמטה עד חציו אמר רב נחמן בר יצחק תרי הוו
חד לנואי וחד לכהנים דלא לשתרקו:

e. s. v. עמר, p. 535, l. 14 ff.

وقال חפץ رحمه الله فی לא תעמר לא تستخدمها بعنف أكثر من
استخدامك للاسرائيلية واستشهد بقول الاوائل לא תעמר בה שלא תשמשנה.

وفي قول الاوائل ايضا הגונב נפש מבני ישראל אינו חייב עד שיכניסנו לרשותו ו יהודה אומר עד שיכניסנו לרשותו וישתמש בו שני' והתעמר בו ומכרו.²³⁶

f. s. v. קצע, p. 642, l. 24

وهكذا فسر فيه راس المتيبة الغيوم رحمة الله. الا اني رأيت في פטום הקטורת קציעה וקשט الذي هو القسط قد ذكر معا بوزنين مختلفين. قيل مود وكציעה وشבלת נרד וכרכם משקל ששה עשר עשר מנה הקושט שנים עשר. وقولهم הקשט هو القسط وقد كانوا ذكروا קציעה. وهكذا ترجم הפזן في הקושט وترجم في קציעה عنبراً.²³⁷

g. s. v. ראה, p. 656, l. 19 ff.

وقد قال بعض الاوائل ان داه بالذال وראה بالراء اسمان لنوع واحد. قالوا מאי שנא הכא דכתיבא דאה ומאי שנא הכא דכתיבא ראה אלא שמע מינה דאה וראה אחת היא وعلى هذا القول عول הפזן ראש בלא رحمة الله عليه في كتابه في الشرائع.

h. Kitāb al-Luma' (ed. J. Derenbourg), p. 15, l. 17.

אסתכרזת תפסירה (יעני תפסיר אלסמא גיר אלמשתקה מן אלספעאל) מן כתב אלעלמא ואלרוסא אלמותוק בנקלהם כרב סעדיה ורב שרירא ורב האיי ורב שמואל בן חפני ראס אלמתיבה וחפז ראש בלה וגירחם מן אצחאב אלספאסיר ואלנאונים רצי אללה ענהם אנמעין.

(2) Judah Ibn Bal'am.

a. Commentary on Num. 4. 7 (ed. Fuchs).

ואסתדל רב חפז נע אנ קשות אלואה מן קד וקסת הסופר במתניו. וליס לה פיה דלילא.

b. Commentary on Deut. 30. 2.

ראית רב חפז נע קד אדכל ושבת ער ה' אלהיך פי גמלה ערד אלשראיע פי אול פצל מן כתאבה . . . ואנמא לנא חפז נע אלי תעדיד הדה פי גמלה אלשראיע לכי מא יכמל לה אלעדד אלדי דכר אלאלוק פי

²³⁶ See Solomon Parhon, *Mahberet he-'Aruk*, s. v. עמר.

²³⁷ See *ibid.*, s. v. קצע.

קולחם דרש י' שמלאי שש מאות ושלש עשרה מצות נצטוו ישראל . . . ולדלך לזא רב חפץ ונירה מן ידכל פיה מא לם יקע אלאמר פי הר סיני מתל נר חנכה ומקרא מגלה ומא סקט ע"א פעלה מתל מעשה משכן אלדי כאן מתל חורית שעה טול מקאמהם דון בנא אלבית וקר כאן אנכר עלי מן אדכל פי זמלה אלשראיע בקור חולים וניחום אבלים פדכל פימא אנכר ובער דלך פלם תבלג מן קולה איצא אלי הדא אלעדר בונה.²³⁸

c. Commentary to Judges 20. 28 (ed. Poznański).

בל קר ראית לרב חפץ נע פי כתאב אלשראיע מא יאיד קולי אן קצה פילגש וקעת קריבא מן זמאן אלפתח קאל לאן פיהא הותרו שבטים לבוא זה בזה במעניי אנה אביה להם אלתזויג למן שאוא באלאכחלאט פי אלסבאט עלי ניר מא כאן וצעה פי בנות צלפחד ולא שך אן כאן ענדהם אסתחנא מתי שאוא אן יפצה פצוה.²³⁹

d. *Sefer Ha-Tagnis*, s. v. חרם.²⁴⁰

e. In his *Kitāb al-Tarjīḥ*, Judah Ibn Bal'ām is supposed to have had the following passage, which was afterwards excerpted by an unknown writer who mistook some of Ibn Bal'ām's remarks for those of Hefeş.²⁴¹

תפסיר אלאלפאט מפיטום הקטורת לרב חפץ ז"ל. הצרי אלצטראק והו צמג אללבני. הצפרן אלטפרה. חלבנה אלמיעה. ורב סעריה ז"ל יקול פיה מחלב.²⁴² קציעה אלענבר. שבלת סנבל. כרכם אלזעפראן.

²³⁸ See Maimonides, *Sefer ha-Miṣwot*, ed. Bloch, p. 5.

²³⁹ See Tanḥum Yerushalmi on the same verse.

²⁴⁰ This is mentioned by Dukes, *Literaturblatt des Orients*, VIII, p. 680; but the passage is not quoted.

²⁴¹ Horowitz, *בית נכות ההלכות*, II, p. 63 ff. As the editor did not understand Arabic, the mistakes are exceedingly numerous. I corrected them as far as was possible, but did not consider it worth while to call attention to every correction, as this would require too many notes. The reader interested in the corrections may compare the original publication with this reprint.

²⁴² This is an interpolation, as I pointed out above, notes 68–70, and the pages to which they refer.

הקשוט אלקוט. קילופה אלכסבאסה. קנמון אלעוד. בורית כרשינה אלשנאן. יין קפריסין שראב אלכבא. מלח סדומית מלח דראני. מעלה עשן ראפע אלרכאן וכאנת חשישה מן כאציאתהא אן יצעד דכאן אלקטרת אלתי פיהא צעידה מסתקימא. . . בתוקיף אלראס עליה. פכפי אמרהא וגא פי מסכת יומא א"ר עקיבא סח לי ה שמעון בן גולה פעם אחת יצאתי אני ואחד מבני בניהם של. . . לשדה ללקט עשבים ראיתיו שבכה ושחק אמרתי לו מפני מה בכיתה אמר לי כבוד נזכרתי ומפני מה שחקת שעתיד הקבה להחזירי לנו ומה ראית אמר לי מעלה עשן כנגדי אמרתי לו הראהו לי אמר לי שבועה היא בדינו שאין מראין אותו לכל אדם. ואמא הצרי אלדי פסרתה אלעצטראק פהו עלי גיר מא ענד אלאולין ז"ל פאנה ענדהם אלבלסאן וכמא שרח דלך פי שבת ק"ו תניא ה שמעון בן אלעזר אומר אין מדליקין בצרי מאי טעמ' אמר רבא מתוך שריתו נודף גזירה שמא יסתפק ממנו אמר ליה אביי ולימא מר משום שהוא עיף וכו'. ואלדי הו עלי הדה אלצפה פהו אלבלסאן פאן דהנה עטר ויתטאיר ענד וקודה לא יתבת והיה אבדא (אבין?) מא ראית פי הצרי פאעל מא וכאן אלתבכיר מנה פי כל יום מאיה דרהם כוי מלא חפניו ביום הכפורים.

(3) Solomon Parḥon, *Maḥberet he-'Aruk* (ed. Stern).

a. s. v. עמר, p. 49 d.

והתעמר בו (דברי' כ"ד) לא תתעמר. (דברי' כ"א) דרך סחורה. ורבינו חפין סגי נהור ראש ישיבה ז"ל אמר לא תשתמש בה בפרך יותר משימושך באשתך הישראלית כדתנן הגונב נפש אינו חייב עד שיכנסנו לרשותו ה יהודה אומר עד שיכנסנו לרשותו וישתמש בו שנא' והתעמר בו נמצא עכשיו כי והתעמר בו והשתמש בו.²⁴⁸

b. s. v. קצע, p. 60 c.

מר ואהלות קציעות (תהלים מ"ה) תרג' וקדה וקציעתא ובפרק פטום הקטרת קציעה פ' ענברא. ורבי' סעדיה ז"ל פ' קשט ונתפס [לפי שנאמר בפטום הקטרת קציעה וקשט לשני סמנים] ורבינו חפין אלוף סגי נהור ראש ישיבה אמר ענברא והדין עמו.²⁴⁴

²⁴⁸ See Ibn Janāḥ, s. v. עמר.

²⁴⁴ *Ibid.*, s. v. קצע. See also Kimḥi, s. v.

(4) *Tanḥum Yerushalmi*, Commentary on Jud. 20. 28 (ed. Haarbrücker), p. 17.

وقال רב חפץ فی کتاب الشرائع ان قصة פילגש בגבעה وقعت قريبا من
زمان الفتح قال لان فيها هותרו שבטים לבוא זה בזה.²⁴⁵

C. PHILOSOPHY AND GENERAL REFERENCES

(1) Baḥya Ibn Paḳūda, *Farā'id al-Kulūb* (ed. Yahuda), p. 7.

والضرب الثاني مختصر عيون الشرائع اما كلها مثل كتاب ر' חפץ בן
יצליח ואما ما يلزمنا منها في هذا الزمان مثل הלכות פסוקות והלכות גדולות
ומאמלה ואما جزى من اجرائها مثل كتب سائر הגאונים في השאלות
וחשובות في فرائض الاجسام ועقد الاحكام.

(2) Judah b. Barzillai, Commentary on *Sefer Yeširah* (ed. Halberstam), pp. 55, 56. This long passage, which gives a Hebrew translation of the first two precepts of the Book of Precepts, was quoted, translated, and annotated above, Chapter II.

(3) Maimonides.

a. *Sefer ha-Miṣwot* (ed. Bloch), p. 5, l. 3 ff.

צאחב כתאב אלשראיע אלמשהור ראיתה תנבֿה עלי גז יסיר מן והם
צאחב אלהלכות ועטם ענדה אן יעד בקור חולים וניחום אבלים כמא עד
צאחב אלהלכות ואלדי אסתעטמה פהו עטים לכנֿה אתי באעטם מנה
ותבעה איצא במא הו אשנע כמא סיבין למן נטר פי כלאמנא הדא.²⁴⁶

b. *Ibid.*, p. 55, l. 13 ff.

צאחב כתאב אלשראיע צדֿה בדלך וקאל פי אול פצל ענר תנמילה
מא ישתמל עליה דלך אלפצל כלאמא הדא נצֿה קאל: "ומנהא אתנין

²⁴⁵ See Ibn Bal'ām on this verse.

²⁴⁶ See Rapoport, *Ḳebuṣat Ḥakamim*, p. 58, and Ibn Bal'ām's Commentary on Deut. 30. 2.

ותלאתין מעני אכברנא בא"ה תב' ותע' יתולי פעלהא לא נחן גמיעהא מצמון. "אמא קולה ומנהא יעני מן אלשי אלדי ישתמל עליה דלך אלפצל ואלאתנין ותלאתין מעני הם תלאתה ועשרין שבין אלדי ילומהם כרת פקט ותספה מחויבי מיתה בידי שמים כמא עד ומעני קולה גמיעהא מצמון יעני א"ה תע' צמן א"ה יכרית זה וימית זה. פלא שך אן ה"א מא בקי ענדה אן יעתקד שש מאות ושלש עשרה מצות כל"ה לאומה לנא בל מנהא לאום לנא ומנהא לאום לה תע' כמא קאל ובין אנה יתולי פעלהא לא נחן וה"א עלם אללה ב"ה ענדי אכתלאט מחין לא יבני אלכלאם פיה בונה לא"הא אקאיל ב"ה אלפסאר.

c. *Pe'er ha-Dor* (ed. Amsterdam), 140, p. 25 d.

תשובה. מא שכתבנו בחבור [ברבר הפרוזובל] הוא האמת אשר אין בו שום ספק וכמו כן זכרנו בפירוש המשנה וזאת המשנה אשר בידכם היא הנוסחא הראשונה אשר יצאה מתחת ידינו קודם הנהגתה ובארנו שם כפי מה שראינו במה שכתב כותב הדינין רב חפץ ז"ל.

Munk, *Notice sur Abou'l-Walid*, p. 198, quotes part of the original of this passage.

وتبعنا في ذلك القول ما ذكره صاحب كتاب الشرائع في حפץ ז"ל وهو غلط منه وكان متا في تبعه دون تصحيح.

d. *Ibid.*, 142, p. 26 d.

ואלו הבלבולים שהוא מבלבל והקושיות שהוא מקשה הם כלם כפי המשנה אבל אני אתקנם בע"ה במקומותם והשי"ת יודע כי רובם הטעוני בהם המשיכי אחרי דברי הגאונים כמו רבינו נסים ז"ל במגלת סתרים ורב חפץ נ"ע בספר המצות וזולתם ממה שאחוס על כבודם לזכרם.

(4) A Genizah fragment containing rhymed prose.²⁴⁷

ואראה כי א[י] לי חפץ ברברי חפ[ץ] ולא מ[ח]יה ברברי רבינו סעדיה ואין ידי לאל בספרי גאון שמואל. ואין לי ממש כי אם במכירת החומ[ש] ולא מצאתי מנוח עד שמכרתי בראשית ואלה תולדות נוח.

²⁴⁷ This fragment is now at the Jewish Theological Seminary of America. I am indebted to Professor Davidson for drawing my attention to this passage, and for copying it for me.

(5) A Genizah letter at the Jewish Theological Seminary of America.²⁴⁸

כי אותן העשרים זהובים שקניתי בהם כתב המצות למרב חפץ בן יצליח האשורי ממנו לקחתים.

(6) Abraham b. David of Portaleone, in his preface to *Shiltē ha-Gibbōrim*, acknowledges his indebtedness to Hefes.

THE *Sefer Hefes*

(1) R. Eliezer b. Nathan.

a. § 30. אבן העזר ספר ראב"ן.

וה"נ מצאתי בספר חפץ שטר שחתמו עליו עדים חמש ונמצאו
ז ראשנים קרובים או פסול תתקיים העדות בשא' והוא דאיכא עדים
דבמילוי חתמו.²⁴⁹

b. *Ibid.*, p. 115 c.

וכן נמצא בספר חפץ היה חייב לחבירו שבועה ואמר לו דור לי בחיי
ראשך יכול לחזור בו עד שיקבל שבועה מפי ב"ד.

(2) R. Eliezer b. Joel ha-Levi (ראבי"ה). This writer quotes this book, according to Gross.²⁵⁰ The ראבי"ה is now being edited by Dr. Aptowitzer, but the first volume that has hitherto appeared contains no reference to the *Sefer Hefes*.

(3) R. Isaac of Vienna.

Or Zarua'.

a. I, § 615.

ובספר חפץ נמי הביא דברי הירושלמי על ההיא דר"א פ"ק דתובות
ולא כתב אי סמכי' עלה אי לא.

²⁴⁸ See *JQR.*, New Series, I, p. 439. I am indebted to Professor Marx for copying this sentence for me.

²⁴⁹ See *Sefer Mordekai*, Makkot, I.

²⁵⁰ *Monatschrift*, 1885, p. 561.

b. Ibid., III, Baba ḥamma, § 281.

בספר חפץ כתוב מצינו בחשובות שאילות של רב נטרונאי נאון שיהודי שמגרים ומאנים את חבירו ומפסידו ומענישו ממון ואין עדות באותו הענוש מה יעשה. והשיב שהמוסר והמגרים לא מצו לאשתבועי ואפקועי דהיבא דאמרי' כל הנשבעין שבתורה נשבעין ולא משלמין היבא דקים להו עלה דמלתא אבל הכא כיון דאמ' דסתם אנס... וממון דישאל כיון דנפל ביד... אין להם חנינה לפיכך נשבע הנגרם והנמסר ושקיל כל הענוש מיד המוסר.

c. Ibid., § 284.

בספר החפץ. רב פלטואי ראש ישיבה אמר מסור פסול לעדות לא מיבעיא מסור גמור ומפורסם אלא אפי' אינש דסני לחבריה וא"ל בפני רבים אוילנא ומסירנא לך מן דיבריה רשע הוא וכי אמרו רבנן לא נחשדו ישראל על כך ה"מ דסני ליה ושתיק מישתק אבל הכא דקא פעי בפרהסי' מדיבורא קא מוזק ופסול לעדות והכי איפסיקית בתרתי מתיבתא דינא דמסור.²⁵¹

d. Ibid., § 370.

בספר החפץ. הכהו בנייר בפנקס בעורות שאינן עבודין. בטימום שטרות שבידו נותן לו ארבע מאות זוז לא מפני שהוא מכה של צער אלא מפני שהיא מכת בזיון, שנאמר קומה ה' הושיעני כי הכית את כל אויבי לחי. ואומ' בשבט יכו על הלחי את שופטי ישראל. ואומר גוי נתתי למכים ולחיי למורטים.

e. Ibid., § 380.

ופר"ח זצ"ל הילכתא כרבא דאין אדם מוחל על ראשי אברים שלו. וכן בספר חפץ לא הביא אלא דברי רבא.

f. Ibid., § 381.

בספר חפץ גליון. החובל בחבירו ומת החובל יתנו היורשין שלו לחובל. מת החובל יתנו ליורשין [של] החובל בין שיש שם טענה בין

²⁵¹ See R. Meir of Rothenburg, *Responsa*, 252 (ed. Cremona); 307 (ed. Prague); R. Samson b. Zadok, 569; R. Meir ha-Kohen, *Haggahot Maimuniyyot*, *Hilkot 'Edut*, II. 3.

שאין שם טענה הרי זה נשבע ונוטל. היה נשוך במקום שאין יכול לישוך
את עצמו הרי זה נוטל בלא שבועה. לאחר זמן זה אומר חבלת בי והוא
אומר לא חבלתי הרי זה כאחת מן הטענות.

g. Ibid., Bata mešifā, § 38.

בחפץ הניזקין בנירסת ירושלמי ראובן גזל שדה משמעון ומכרה ללוי
ולוי נתנה במתנה ליהודה בא שמעון וטרפה. יהודה לא אויל בלוי ולוי
לא אויל בראובן א"ל לאו מתנה יהבת א"ל בעיני' תתן כמה משלם לי
טיבו אבל בעל מתנה לא יכול למיטרף לנותן דאמר ר' יוסי אין שעבוד
למתנה וה"מ שלא באחריות.

h. Ibid., Baba batra, § 76.

ובספר גאונים הנקרא ספר חפץ כתב ואם מת ראובן תחילה ואחר
כך מתה אמו אם יש לו בן עומד במקום אביו להנחיל אחיו מאביו.
אמר ר' יוחנן משום ר' יהודה בר שמעון אשה יורשת את בנה דבר תורה
דאמר קרא מטות מקיש מטה האם למטה האב מה מטה האב יורש את
בנו אף מטה האם אשה יורשת את בנה. וליתא אלא כמתני' קיימא לן.

i. Ibid., § 78.

ובספר גאונים הנקרא ספר חפץ. כתב פסק דינא דמר יהודאי גאון
ראובן הווי ליה בני ובת קטנה שכיב בכור בחיי אבוהי ושבק בני וברת
ושבק ראובן אבוהון וקא תבעין בני בריה ראובן חלק בכורה דאבוהון.
דינא הוא דשקלין בני דבריה חלק בכורה ואע"ג דשכיב אבוהון בחיי
דראובן ובת בכור אין לה עישור נכסי אלא בנכסי אביה ואי בעאן מסלקין
ליה בוזי ויהבין לבעלה בדמי נסבא עכ"ל הגאון ז"ל.

j. Ibid., § 99.

ופסק בספר חפץ דקיימא לן ערעור דחד.

k. Ibid., § 110.

ובספר חפץ גרסי' האומר תטול בתי כאחד מן הבנים וכו' והא נמי
הלכתא היא.

l. Ibid., § 112.

ובספר החפץ כתוב ת"ר ר' יוחנן בן ברוקא אומר אם אמר על מי שראוי ל'ורשו דבריו קיימין על מי שאינו ראוי ל'ורשו אין דבריו קיימין. כיצד אם אמר על בת הבן בין הבנים ועל בן הבת בין הבנות דבריו קיימין אמר על בת בין הבנים ועל האח בין הבנות לא אמר ולא כלום עכ"ל.

(4) R. Moses of Coucy, *Sefer Mišwot Gadol*.

a. Negative precept III, p. 36 d.

אבל אם בדקה יום ראשין ויום שמיני בלבד ולא בדקה ביום השביעי בזה נחלקו רב ורבי חנינא בפרק אחרון ואל'בא דרבי אליעזר דרב מתיר הואיל שבדקה בתחילתן של שבעה אף על פי שלא בדקה בסופן ורבי חנינא אוסר הואיל ולא בדקה בסופן. . . הואיל ולא נתברר הלכה כדברי מי ראוי להחמיר כדברי רבי חנינא. . . ובספר חפץ פוסק רב ורבי חנינא הלכה כרב.

b. Positive precept 107.

ונרסי' נמי ביר' בפ"ק דסנהדרין ובספ' חפץ הביאו בימי ר' שמעון בן יוחי בטלו דיני ממונות א"ר שמעון בן יוחי בריך רחמנא דליבא חכם מידון רבי יוסי בר הלפתא באו שני אנשים לפניו לדרן אמרו לפניו על מנת שתדוננו דין תורה אמר להם איני יודע לדרן אתכם דין תורה.²⁵²

(5) R. Meir of Rothenburg, *Responsa*.

a. (Ed. Cremona), 127.

ומה שתמהת שכתבתי דנכסי בחזקת יתמי קיימי. ר"ח פסק כן בפירושו ובספר חפץ משום דמסיק לבסוף פרק אלמנה דע"כ נכסי בחזקת יתמי קיימי.

b. Ibid., 252.

כתב בספר חפץ מסור פסול לעדות ולשבועה וכן פסקו בשתי ישיבות עד כאן לשונו.²⁵³

²⁵² I am indebted to Professor Louis Ginzberg for this reference. That Hefes in his Book of Precepts discussed such matters is evident from text, fol. 5 a, ll. 13 ff.

²⁵³ See above, note 251.

c. (Ed. Prague), 175.

[לענין נסכא] כלומר שאם בא להתיכן ולעשות מהן גרוטאות נמצא מרויח דיהא בהן כסף יותר מן הראשונים והועיל עליו אפי' פרוטה אסור משום רבית כך פרש"י וכן נמצא בספר חפץ.

d. *Ibid.*, 307.

נמצא בספר חפץ דהכי אמר רב פלטי גאון ראש ישיבה מסור פסול לעדות ולא מבעי' מסור גמור ומפורסם אלא אפי' אינש דסני לחברי' וא"ל בפניו אזילנא ומסירנא לך הו"ל רשע והא דאמרו רבנן לא נחשדו ישראל על כך ה"מ דסני לי' ושתיק אבל היכא דקצווה בפרהסיא דקמזיק לי' פסול לעדות וכן נפסק בב' ישיבות.²⁵⁴

e. *Ibid.*, 852.

כתב בעל החפץ אשה שאברה כתובתה ונתאלמנה או נתגרשה גובה אפי' תוספת ומביאי' ב' או ג' כתובות של קרובותיה ונותני' לה כפחותה מהן ובשבעה וכן המנהג.²⁵⁵

(6) R. Ephraim b. Jacob, *Responsa* of R. Meir of Rothenburg (ed. Lemberg), 318.

ובספר חפץ נמצא כתוב שכך נמצא בהלכות פסוקות דר' אבא ההוא חביתא דאשתקיל [ברזי'] אתא עכו"ם סכרי' באצבעתי' אתא לקמיה דרב ואמר מברוא ולעיל אסור בהנאה ומברוא ולתחת מותר בהנאה.

(7) R. Isaac of Corbeil, *Sefer Mišvot Katan*, 82, headed ל' לקומין מרבינו מאיר מרומנבורק ז"ל p. 22 b.

רבינו חננאל פסק בספר חפץ שעשה שאפי' אדם שנשבע בנקיטת חפץ שיש לו התרה לדבר מצוה.²⁵⁶

(8) Tosafot Baba meši'a, 4 a, headed שש תר.

אך בספר הפץ משמע דהילך חייב.²⁵⁷

²⁵⁴ See above, note 251.

²⁵⁵ See R. Moses of Coucy, *Sefer Mišvot Gadol*, positive precept 48, p. 127 b; *Sefer Mordekai*, Ketubot, IX, 234 (ed. Wilna).

²⁵⁶ See R. Samson b. Zadok, 412.

²⁵⁷ See *Haggahot Maimuniyyot*, *Hilkot To'en ve-Ni'ān*, 4. 1.

(9) R. Samson b. Zadok, תשב"ץ.

a. 412.

וכתב שאם נדר אדם לגרש את אשתו יגרשנה ואח"כ יחזור וישאנה
ובשביל שעברו כבר ימים רבים שלא למדו מסכת נדרים בישיבה החמיר
בשבועות ונדרים. אמנם ר"ח פסק בספר חפץ שעשה שלדבר מצוה יש
לו התרה.²⁵⁸

b. 569.

נמצא בספר חפץ הכי קאמר רב פלטי ר"אש ישיבה מו"ק פסול לעדות
ולא מבעיא מו"ק נמור ומפורסם אלא אפילו אינש דסני לחבריה ואמר
בפני עדים אזילנא ומזיקנא לך הוי רשע והא דאמור רבנן לא נחשדו
ישראל על כך הני מילי דסני ליה ושתיק אבל היכא דצווה בפרהסיא
דקא מו"ק ליה פסול לעדות והוא הדיון לשבועה וכן נפסק בשתי ישיבות.²⁵⁹

(10) R. Mordecai b. Hillel, *Sefer Mordekai*.

a. Yebamot, II, 6 (ed. Wilna).

זוקא לא פקעא בכדי וכן הלכה וכ"פ רבינו חננאל וכן ספר חפץ וכן
שאר הגאונים.

b. *Ibid.*, II, 7 (ed. Wilna).

דרכי חייא לא איפשיטא אם יש להם הפסק או לא ואולינ לחומרא
ויחלין וכ"פ ר"ח וספר חפץ.

c. Ketubot, IX, 234 (ed. Wilna).

כתב בעל החפץ אשה שאברה כתובתה ונתאלמנה או נתגרשה גובה
אפילו תוספת ומביאין ב' כתובות או ג' מקרובותיה ונותנין לה כפחות'
שבהן ובשבועה.²⁶⁰

d. X, 243 (ed. Wilna).

וששאלתם במילתא דאיכא פלוגתא דרבוותא אם יש לעשות שודא
דרייני לא עבדינן שודא אלא מי שהוא גדול הדור ומומחה לרבים מדאמר

²⁵⁸ See R. Isaac of Corbeil, *Sefer Mišvot Qaṭan*, 82.

²⁵⁹ See above, note 251.

²⁶⁰ See above, note 255.

ליה ר"נ לרב ששת חדא דאנא דיינא ומר לאו דיינא אלמא רב ששת לא מצי למיעבד שורא אלא ר"נ שהיה דיין מומחה דהלכתא כוותיה בריני ועוד לא עבדינן שורא אלא היכא דאיתמר בהדיא בגמרא והיכא דלא איתמר המוציא מחבירו עליו הראיה ושלום מב"ב וכדברי הר"ם. כך כתב בספר חפץ.

e. XII, 265 (ed. Wilna).

וכן כתבתי לעיל פרק הכותב משום ספר חפץ [בדבר אשה שתבעה כתובתה].

f. *Kiddushin*, I, 488 (ed. Wilna).

והלכתא כרב פפא וכרב שרביא וכו' [דשטר אירוסין צריך להיות מרעתה] אבל בספר חפץ פסק כרבא וכרבינא.

g. *Ibid.*, 489 (ed. Wilna).

ובספר חפץ פסקו דלית הלכתא כשמואל ובעינן דלהוי הכא ש"פ.

h. *Sanhedrin*, III, 696 (ed. Wilna).

ובספר חפץ משמע דאזהב או שונא פסולין לדון כדאמרינן פרק שני רייני גזירות.

i. *Makkot*, I, 728 (ed. Wilna).

ובספר חפץ נמצא דלא מכשרינן אלא היכא דאיכא עדים דלמלוי
חתמו.²⁶¹

j. *Glosses to Mordekai*, Yebamot, X.

ובספר חפץ תירץ הא דקאמר מפיהם ולא מפי כתבם כשאינו כתב ידם.

(11) R. Meir ha-Kohen, *Haggahot Maimuniyyot*.

a. *Ahabah*, end of *Seder Tefillot*, 4.

ור"ח כתב בספר חפץ שאין להזכיר של ר"ח וכן איתא בירושלמי בריש שבועות עבר קומי תיבות' בריש שתא לא אדכר דריש ירחא וקלסוניה וסיים בספר חפץ כל הפטור מן הדבר ועושהו נקרא הדיוט.

²⁶¹ See ספר ראב"ן § 30.

b. *Hilkot Shekēnim*, 3, 5.

וכ"פ ד"ח בספר חפץ [שמגלגלין עליו את הכל אם נגדרה הרוח הרביעית של חורבתו].

c. *Hilkot Ishshut*, 14, 30.

ואי בעי' למיפק משום דאיתמרעת ולא בעי' דלירי' לה בעל לא דיינינן לה דינא דמורדת וכן בכל הני דכופין אותן להוציא אי מיתת איתתא מקמי גיטא ירת לה בעל וכן כתב בה"ג ובפר"ח ובדברי ר"י אלפס ובסר חפץ.

d. *Hilkot To'en we-Niṭ'an*, 4, 1.

ודלא כספר חפץ ומהדורא בתרא דר"ח שפסק מכאן דהילך חייב.²⁶²

e. *Hilkot 'Edut*, 11, 3.

כתב בספר חפץ שכך אומר רב פלטי דלא מבעיא מסור גמור אלא אפי' אדם מפורסם ומריב עם חבירו ואמר לו אלך ואמסור ממונך הואיל ומעזי פניו בפרהסיא נחשב רשע ופסול לעדות והוא הדין לשבועה, וכן נפסק דין המסור בשתי ישיבות ס"ה ע"כ.²⁶³

(12) A commentary to a Maḥzor.²⁶⁴

α. Fol. 37 a.

וכן פסק האילפס דאשמש בהו בכלי שני כגון קערות וכיוצא בהן כי שרי עליהן רותחין בכלי שני ומשהו להו בנוייהו עד דפלטי שפיר דמי וכן פסק נמי בספר חפץ.

²⁶² See *Tosafot*, Baba meṣi'a 4 a, headed ששח.

²⁶³ See above, note 251.

²⁶⁴ I am indebted to Professor A. Marx for his kindness in copying these two passages for me. He also drew my attention to Marco Mortara, *Catalogo dei Manoscritti Ebraici della Biblioteca della comunità Israelitica di Mantova*, Livorno, 1878, p. 36, where the following note occurs in a description of *Responsa* mostly by R. Meir of Rothenburg: 'Molte opere ed autori vi sono citati come il חפץ (no. 385, 389, 526) di ר"ח.'

6. Fol. 38 a.

וכן פסק האלפסי בתוך ע"ז ובסיפו של גוי שחזתמו חמין בין ביורה גדולה בין ביורה קטנה מותר דקיימא לן נותן טעם לפגם מותר וכן פסק רבינו חננאל בספר חפץ וכל הגאונים התירו אפילו בקדירה בת יומא.

(13) R. Abraham (brother of R. Meir of Rothenburg) in ספר סיני.

VIII

CONCLUSION

In copying this manuscript I have endeavoured to give a faithful reproduction of the original. Even in cases where there was an obvious scribal error I preferred to let it stand in the text and correct it in a note, rather than give the emendation in the text and call attention in a note to the error in the manuscript. I felt justified in doing so, because this is a unique manuscript, and I wanted to give the reader the opportunity of seeing at a glance what is actually there. The best emendation, unless it is independently corroborated, necessarily contains an element of subjectivity, and it is hard to draw a line of demarcation between the certain and the probable, for what may appear obvious to one writer may be considered far-fetched by another. By giving only 'correct' readings the editor unduly influences the reader. In one minor point, however, I have perhaps deviated from the original. I have joined the definite article ל to the following word in accordance with Arabic usage. Now the words in the manuscript are not sufficiently separated from one another, and it is hard to tell what was the copyist's intention in this matter. There are one or two cases, however, where ל is at the end of the line, and belongs

to the word with which the next line begins.²⁶⁵ This would seem to indicate that the copyist considered this particle as a separate word. Owing, however, to the rarity of such cases, I did not deem it advisable to disfigure the text.

My omitting to supply diacritical points over the letters was based on very careful considerations. At first sight it seems strange that there should be a consistency in placing dots over ם and ץ, while the other letters are systematically neglected. This characteristic is shared by practically all old Genizah fragments that I examined. That the Jews who employed the Hebrew alphabet for Arabic words adopted a phonetic scheme is evident from the circumstance that خ is represented by ך and غ by ם, and not by ח and ע, respectively. They attempted as far as possible to write down the words as they were pronounced. Now we have no means of determining exactly at what period the distinction between some letters differentiated by dots was dropped in pronunciation, but it is safe to assume that this process took place before the Jewish-Arabic period. In colloquial Arabic there is no difference between ذ and ז, و and ث. This at once explains why no diacritical mark was put over ך and ח. Then غ approximates so closely the pronunciation of the hard g that Arabs (even in Egypt where ج has the hard pronunciation) in the majority of cases transliterate the hard g by غ. European Arabists are sometimes puzzled by such a word as غازيت, which simply represents *gazette*.²⁶⁶ This would accordingly dispense with the necessity of placing a mark over ם. The pronunciation

²⁶⁵ See e. g. text, fol. 4 a, l. 1.

²⁶⁶ Karaite writers who transcribed Hebrew words in Arabic characters employed غ for ם. Thus הַנּוֹנֵעַ = هُنُوغِيْع (G. Margoliouth, 'Abu'l-Faraj Furkan', *JQR.*, XI, p. 207, l. 8).

of כ without a *dagesh* coincides with that of Arabic خ, and there was no need to indicate that no *dagesh* was in that letter, just as in unvocalized Hebrew texts that mark is omitted.²⁶⁷ Had they intended to place a diacritical mark over כ, they might have more judiciously chosen letter ח with a mark to represent خ. It is only to represent ض and ظ, which have no equivalents in the Hebrew alphabet, that they were compelled to resort to diacritical marks. Accordingly we have no right to tamper with these texts. It is easy to supply the diacritical points, and to make the language appear more classical. But what benefit would we derive? Our loss is evident; for by altering the text we destroy the only material we possess for the reconstruction of Jewish-Arabic. I wish to lay especial emphasis on this point, for I confess that I attach more value to the linguistic aspect of such texts than to the philosophic or halakic. The reader who is not sure of the values of some ambiguous letters will find sufficient guidance in the translation and notes.

The Hebrew translation follows the original as closely as is compatible with the Hebrew idiom. I did not feel bound to follow the style of the Tibbonites in vocabulary or construction. The Tibbonites have no doubt enriched the Hebrew language, but their conception of the duty of a translator is, to say the least, out of date. Why should one be compelled to write ביה השער merely because the Tibbonites wrote so in conformity with the Arabic construction? The Hebrew idiom is to say כדברך, where in Arabic كقولك would be used. Why, then, should we say באמרך, which

²⁶⁷ It may be of interest to mention that some old manuscripts place diacritical marks, dots or lines, over ט, כ, and צ, thus avoiding all possible cases of ambiguity.

is an infinitive, and would convey a different idea? Moreover, Hefes mostly had biblical or talmudic expressions in mind, and I thought it advisable to reproduce these expressions as far as possible. This naturally makes the style slightly uneven, for biblical and talmudic constructions occur side by side. To obviate too great a contrast, I refrained from employing the waw consecutive. Hefes invariably introduces biblical and talmudic passages by כֵּן and לֵכָן, respectively. The ל of לֵכָן does not mean *because*. It is, to my mind, employed as a technical distinction between biblical and post-biblical passages. Considering the various terms by which this distinction may be expressed in Hebrew, I decided to render כֵּן by כְּמוֹ שֶׁבְּחֻב and לֵכָן by כְּמוֹ שֶׁאָמְרוּ. The expression לִפִּי שֶׁאָמְרוּ would certainly not have done justice to the latter. The Tibbonites would, I suppose, have rendered these expressions by כְּאָמְרוּ and לְאָמְרוּ or לְאָמַר.

I herewith take the opportunity of expressing my gratitude to Dr. Cyrus Adler, President of the Dropsie College, for his kindness in placing the manuscript at my disposal and for encouraging me in my work. I am also indebted to Prof. Henry Malter for reading the proof-sheets and for some valuable suggestions, to Prof. Louis Ginzberg for locating a few passages for me, and to Prof. Alexander Marx for his promptness in forwarding me books, which I needed in connexion with this publication, from the library of the Jewish Theological Seminary of America.